



## "Children of the Dust"

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### "Children of the Dust"

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## I. Summary

There are all kinds of people in Dong Dau Center, including students and soldiers, and anyone who is picked up sleeping in parks or on the street late at night. There were 10 people in my room. The oldest was fifty, and the youngest was 16. I saw a mother and son-the son was three or four years old. The guard sent his mother away somewhere, I don't know where, and put the child into my room. He was crying so much. The guards asked us to keep the child. He cried all night. This happened after I had been there for one week. He was still there when I left.

-17-year-old boy working as a shoe shiner in Hanoi, September 2004

When children return from detention they are often pale, thin, and suffering from skin problems, such as scabies. At least half of the time, the kids have visible bruises from beatings. They are often more withdrawn and "numb" than before their detention.

-Social worker in Hanoi, January 2006

In 1990, the Socialist Republic of Vietnam became the first country in Asia, and the second country in the world, to ratify the Convention on the Rights of the Child. Since the early 1990s the government has taken positive steps to enact legislation and policies to protect the rights of children, especially those deemed vulnerable.

But for street children in Hanoi-and likely other major cities as well-Vietnam is falling far short of its obligations under Vietnamese and international law, including the Convention on the Rights of the Child.

Between 2003 and 2006, Human Rights Watch received credible reports of serious abuses of street children in Hanoi. Primarily poor children from the countryside who go to Hanoi to find work, street children are routinely and arbitrarily rounded up by police in periodic sweeps. They are sent to two compulsory state "rehabilitation" centers on the outskirts of town, Dong Dau and Ba Vi social protection centers, where they may be detained for periods ranging from two weeks to as much as six months.

Social Protection Centers (*Trung Tam Bao Tro Xa Hoi* in Vietnamese), also known as Social Charity Establishments, Social Support Centers, Social Relief Centers, or Transit Centers, are closed institutions for beggars, homeless adults and children, sex workers, drug addicts, orphans, disabled and elderly people without family support, and street children. In theory, the centers are operated and administered by the Department of Labor, Invalids and Social Affairs (DOLISA) together with local People's Committees. In fact, the Ministry of Public Security plays a significant role in their operation.

The centers operate as part of the Vietnamese administrative-rather than criminal justice-system. This means that, according to Vietnamese law, court orders are not required in order for children and others to be rounded up and detained at the centers, and the normal criminal law safeguards do not apply. Under Vietnam's international legal obligations, however, the classification of the centers as administrative holding facilities rather than criminal detention centers does not alter the rights of the children not to be arbitrarily detained, to due process, and to appropriate conditions of detention.

The treatment of street children in detention, particularly at Dong Dau, is harsh. They are locked up for 20-three hours a day in filthy, overcrowded cells, sometimes together with adults, with only a bucket for excrement. The lights remain on night and day. They are released for two half-hour periods a day to wash and to eat. At Dong Dau they are offered no rehabilitation or educational and recreational activities, and no medical or psychological treatment.

Even more alarming are reports that children detained at Dong Dau are subject to routine beatings, verbal abuse, and mistreatment by staff or other detainees, sometimes with staff acquiescence. Children reported that Dong Dau staff members slap, punch, and beat children with rubber truncheons for violations of rules, which sometimes have not been clarified with the children. Children reported being beaten for benign behavior such as being slow to respond to questions or not knowing how to queue, as well as for attempting to escape. Afterwards, they rarely receive medical treatment for their injuries, nor are staff persons who carry out the beatings disciplined.

Rather than serving as rehabilitation center, Dong Dau is in fact a detention facility; upon release, many of the children are battered, bruised, and less equipped for basic survival.

While children interviewed by Human Rights Watch report that conditions at Ba Vi are slightly better than at Dong Dau—they say there are fewer beatings, they are given better food, and living conditions are cleaner and less crowded—questions remain as to whether it meets the standards set out in government policies or the Convention on the Rights of the Child. In this report, however, we focus largely on Dong Dau, where the bulk of our information is from.

Officially, the government's policy is to round up street children for the purpose of reuniting them with their families.<sup>[1]</sup> In practice, staff members at the state centers, particularly Dong Dau, rarely make an effort to link children with their families or even notify the families about their children's whereabouts, nor are children detained at Dong Dau allowed to communicate with their families.

None of the children we spoke to were told the grounds on which they were being rounded up or what rights they had while in detention. They had no way to challenge their detention, and there is no practicable system of redress for abuses inflicted on them.

The children said that at the end of their detention no efforts were made to take them home or reunite them with their families. Instead, the children we talked with said they were deposited at the gates of the centers—which are more than 20 miles from Hanoi—and expected to find their way. Most did not go back to their homes in the countryside, but returned to Hanoi with no new alternatives.

Roundup campaigns directed by government authorities are often launched in advance of national holidays, international meetings, and prominent state visits in order to remove street children, beggars, and vagrants from the street and out of view of international visitors. One such crackdown on homeless adults and children in Hanoi took place in 2003 before the South East Asian (SEA) Games and another in October 2004 before the meeting of the Asia-Europe Summit Meeting (ASEM).

At this writing, there were reports that arrests of street children were intensifying in the lead up to the Asia Pacific Economic Cooperation (APEC) meeting of world leaders, scheduled for November 17-19, 2006, in Hanoi, to be attended by US President Bush.

The round-up campaigns in Hanoi have cleared some of the city's high-profile districts of street people, including children who make their living on the street. Particularly since 2003, many street children, fearing arrest and detention, now work the streets in less prominent parts of Hanoi, where they solicit business from Vietnamese, rather than foreigners.

Sweeps of children from central areas of Hanoi have caused some observers—including tourists, journalists, official visitors, officials, and donors—to think the problem has disappeared and the numbers of street children are decreasing. However organizations working with street children say the problem remains serious but often goes undetected because of the street children's "invisibility, mobility, and seasonality."<sup>[2]</sup>

"They are still here but much more difficult to find," a social worker told us. "The problem has been pushed underground."<sup>[3]</sup>

## **Key Recommendations**

Although Vietnamese law outlines policies and programs to assist street children, lack of implementation endangers children and makes them vulnerable to abuse. In fact, our research finds that government authorities are often doing the opposite of what is called for in Vietnamese and international law.

Human Rights Watch calls on the Vietnamese government, international donors, and non-governmental organizations (NGOs) to:

call for an independent investigation of conditions and practices at DongDauSocialProtectionCenter and for development of a plan of action to halt abuses there;

ensure the halt of the practice of ordering systematic round ups of persons, including street children, particularly in advance of public and international events;

ensure that Vietnam's treatment of street children fully complies with the country's national and international human rights obligations, in particular its obligations to ensure children's rights to liberty and protection from abuse;

ensure that centers for street children meet international standards, promote rehabilitation and family reunification (when appropriate), and provide adequate education and health care;

ensure that the abuses against street children detailed in this report are fully investigated;

hold to account those responsible for violating the rights of street children.

### **Methods and scope**

Because the Vietnamese government does not allow international human rights organizations to conduct independent research in Vietnam, information about human rights violations, such as conditions or abuses that may occur in Social Protection Centers, is highly difficult to obtain. No UN or non-governmental staff, diplomats, or journalists with whom Human Rights Watch met had ever visited Dong Dau, and, in fact, most had never heard of it. Some had visited Ba Vi, but on government-guided tours where they were allowed to see only certain sections. Nonetheless, through interviews with people who had been detained in the centers, Human Rights Watch is confident that it has been able to compile credible documentation of the treatment of street children in Social Protection Centers in Hanoi, with primary focus on conditions in Dong Dau.

Human Rights Watch uses the term "street children" to refer to anyone under the age of 18 who spends most of their time on the street or other public areas such as parks and markets without adult protection or supervision, and who regularly earns money through casual, street-based work.<sup>[4]</sup>

Most of the children we spoke with do not usually sleep on the street, but in low-cost boarding houses or dormitory rooms that they share with friends.<sup>[5]</sup> Like most of Hanoi's street children, the ones we spoke with have families, usually in provinces outside of Hanoi, with whom they may be in periodic touch and to whom they send part of their income.

This report is based on interviews with street children in Hanoi conducted by Human Rights Watch between 2003 and 2006. We focus on the arbitrary detention and abuse of street children in Hanoi and their treatment at one of the Social Protection Centers to which they are sent, Dong Dau. The scope of this report is not exhaustive, nor does it evaluate the situation in other institutions or in other parts of the country. This report does not attempt to offer an in-depth analysis of the complex social, economic, historical, and political factors which have resulted in the social phenomenon of street children in Vietnam.

Research included interviews with 18 street children and seven young adults working on the street, many of whom had done so since they were children. We conducted in-depth interviews individually with 11 children, out of earshot and view of others. Several children were interviewed immediately after their release from Dong Dau, before they had had a chance to interact very much with other street

children. About two-thirds of the interviews were conducted by English-language interviewers with Vietnamese translation, three were conducted in English with children who spoke English, and the rest were conducted in Vietnamese. We received additional information corroborating the scale of detention from a larger pool of street children, former street children, and staff from non-government organizations (NGOs) and businesses in Hanoi.

To protect the privacy and safety of the children interviewed for this report, their names have been withheld. We have used pseudonyms for them, which do not reflect real names. Almost all of the other individuals and NGO representatives who were interviewed requested anonymity for themselves and their organizations, particularly when speaking on issues of police abuse of street children. A summary of our findings and recommendations was sent to the Vietnamese Embassy in Washington, D.C.

We also consulted secondary sources, such as reports by non-governmental organizations, UNICEF, and independent researchers and journalists, as well as reports in the Vietnamese state media and Vietnamese laws and policies.

This is the latest in a series of reports by Human Rights Watch on street children, juvenile justice, and the conditions of confinement for children. Human Rights Watch has documented police violence against children in the Democratic Republic of Congo, Brazil, Bulgaria, Colombia, Egypt, Guatemala, India, Jamaica, Kenya, Northern Ireland, Pakistan, Papua New Guinea, Russia, Sudan, and Turkey. Human Rights Watch has investigated and reported on conditions of detention in several of these countries and the US states of Colorado, Georgia, Louisiana, and Maryland.

## II. Background on Street Children in Hanoi

I don't want to be a shoe shiner, but I can't do anything else. I have to do it to help my family.

-Street child interviewed in December 2005

In Vietnam children who live or work on the streets are often called *bui doi*, which means "children of the dust," or "the dust of life." Street children are also referred to as "wandering" or "roaming" children.

While Vietnam's policy of *doi moi* (the economic reform program launched in 1987) and its transition to a market economy have been credited with helping to lift many Vietnamese citizens out of poverty, economic reform has also been linked by Vietnamese government officials to a rise in "social evils" (*te nan xa ho*).<sup>[6]</sup> The problem of street children is included as a target of mass mobilization campaigns by the government, along with drug abuse, prostitution, HIV/AIDS, human trafficking, gambling, and vagrancy.<sup>[7]</sup>

Street children have been described by a government official as one of the "negative phenomena arising from the revival of state-sanctioned capitalism."<sup>[8]</sup> A 1998 directive by the prime minister attributes the problem not only to poverty, but government inattention to factors pushing children onto the street:

The increasing numbers of street children and labor-abused children are posing a burning social problem today. They are the subjects [who are] highly vulnerable to social evils. The above-mentioned situation is partly attributed to such socio-economic reasons as unemployment, illiteracy, increasingly widened gap between the rich and the poor, moral degradation in some families... and also partly to the improper, incomprehensive and ineffective coordination among various branches and levels [of government] as well as the lack of their concentrated efforts in addressing this problem.<sup>[9]</sup>

Economic liberalization has widened the disparities between rich and poor and between rural and city dwellers. Rural families, and sometimes children on their own, are migrating to urban centers to find work. The removal of state subsidies and the disbanding of agricultural cooperatives in 1988, which had provided health, social security, and education services, has weakened traditional safety nets and led to disruptions in social service delivery in the countryside.<sup>[10]</sup> Many forms of social assistance have been privatized, and user fees introduced for some of the costs of education, health care, and childcare. Individual households are shouldering more of the costs of services. While some families may be better off than in the past, many are less equipped or receive less support to deal with shocks such as crop failure, natural disasters, or the impact of regional and national financial crises on domestic goods and services.<sup>[11]</sup>

While poverty is a significant factor driving children to leave home to work on the streets, others reportedly come from families who have enough money to provide for them. These children leave home because of family or social problems such as death of a parent, domestic violence, alcoholism, divorce, or abandonment.<sup>[12]</sup>

### Numbers of street children in Hanoi

Statistics vary as to the numbers of street children in Hanoi. The Ministry of Labor, Invalids, and Social Affairs (MOLISA) estimates that there are 23,000 street children throughout Vietnam and 1,500 in Hanoi.<sup>[13]</sup>

While Hanoi's street children have become less visible since the police round-ups of 2003, organizations and individuals interviewed by Human Rights Watch believe their numbers have not decreased.<sup>[14]</sup> According to interviews conducted in 2004 by the Vietnam Development Forum, the numbers of street children have not significantly decreased in recent years, although the children are now

"more scattered and less visible."<sup>[15]</sup> Their numbers in Hanoi may temporarily drop after police round-up campaigns, as some rotate in and out of detention and others return to their homes in the provinces for a while before returning to the streets of Hanoi.<sup>[16]</sup>

In Hanoi, street children work in parks, markets, bus and train stations, and near temples and tourist attractions. While some support themselves by pick-pocketing and pilfering from shops, many earn a living by selling newspapers, postcards, and lottery tickets, begging, shining shoes, scavenging, and portering in markets. The primary occupation for boys is shoe-shining; for girls it is street vending.<sup>[17]</sup> According to news reports and Human Rights Watch's own interviews, most street children in Hanoi earn about 20,000 dong (U.S.\$1.25) or less a day.<sup>[18]</sup>

According to a 2003 study by the Youth Research Institute, 75 percent of street children in Hanoi are boys.<sup>[19]</sup> Most of them originate from Thanh Hoa, an impoverished coastal province south of Hanoi (24 percent). Others come from provinces around Hanoi, including Phu Tho (12 percent), Hung Yen (9 percent), Ha Nam (9 percent), Nam Dinh (8 percent), Bac Giang (7 percent), and Nghe An (7 percent).<sup>[20]</sup>

In Hanoi, many street children work in Hoan Kiem district, although they keep their distance from Hoan Kiem lake, a major tourist attraction, because they are more susceptible to being picked up by police there. Some find work from local residents in other parts of the city, including markets north of the Old Quarter, in the back alleys around Long Bien bus station in Ba Dinh district, in squatter settlements in the flood plain near the river in Phuc Xa commune, or across the Long Bien bridge in Gia Lam District. They can also be found in Thanh Xuan district, where the city's largest bus station is located, near the stadium in My Dinh district and the train station in Dong Da district, and around Lenin Park and Bach Khoa University in Hai Ba Trung district.

### **"Some days I earn nothing"**

A 15-year-old boy who works as a shoe shiner in order to support his family in Hung Yen province described a typical day:

I start work at 8 a.m. and finish at 5:30 in the afternoon. I ride a *xe om* [motorcycle taxi] to and from work. I work on Hang Gai [street]. I can shine fifty pairs of shoes a day. I have a lot of regular customers. I am afraid of being arrested by the police. Sometimes I hide my toolbox in a bag. That's quite inconvenient because then sometimes people don't know that I'm a shoe shiner.

I spend 30,000 dong [U.S.\$1.87] on food a day. I eat lunch near Hang Gai and dinner in the Phuc Tan area, where I sleep in a guesthouse. I pay 2,500 dong [U.S.\$0.15] a night. There are six people in one room. We sleep on mats. I shower and wash my clothes at the guesthouse.

I go home once every 10 to 15 days. I am quite happy to go home, because I can see my parents. They are even happier to see me. They feel so-so about my work.<sup>[21]</sup>

Other shoe shiners, such as 18-year-old Hung, make less money:

Some days I earn nothing. Some days just enough for food-20,000 to 30,000 dong [U.S.\$1.25 - \$1.87]. On average I shine 10 pairs of shoes a day.<sup>[22]</sup>

Like most of the street children interviewed by Human Rights Watch, Hung said he sent a large part of his income home to his family in the countryside:

I send home 200,000 to 300,000 dong [U.S.\$12.50 - \$18.75] a month. The rest I spend on accommodation, clothes, and



food. My family uses the money to pay interest on their debt.[23]

Similarly, 17-year-old Canh, who is from Hung Yen, said:

I can earn 15,000 to 20,000 dong [\$0.90 - \$1.25] a day. I send home all of the money except what I need for food and a place to stay. My family uses the money to raise animals-ducks, pigs, cows-and to send my sisters to school. My family is very poor. I know they need the money. They're always in financial trouble.[24]

### **Government bodies responsible for child protection**

Several ministries and departments are responsible for protection of street children in Vietnam, with the stated aim being to return them to their homes and reunite them with their families.[25] At the national level these include the Ministry of Labor, Invalids, and Social Affairs (MOLISA), the Ministry of Public Security (police), and the Committee for Population, Family and Children.[26]

At the provincial and municipal level, the Department of Labor, Invalids, and Social Affairs (DOLISA) and local People's Committees are responsible for care and protection of street children. This includes establishment and administration of Social Protection Centers.

Social Protection Centers thus fall within the locally-controlled administrative system (see below) rather than the juvenile justice system.[27] In theory, People's Committees and DOLISA are responsible for managing these institutions, although it is clear that the Ministry of Public Security also plays a key role in the centers' workings.[28]

The Committee for Population, Family and Children (CPFC) is the ministerial-level state agency with national responsibility for child protection, care, and education of children in need of special protection, including those who have been separated from or unable to live with their parents or guardians.[29] It is also responsible for monitoring the operation of all "child support establishments," which presumably include Social Protection Centers, to ensure that their operation is consistent with their purposes and legal requirements.[30] Together with the Ministry of Public Security, the CPFC is responsible for overseeing the protection of children's rights.[31]

Street children come in contact with government authorities in various ways-through the social welfare system, as "social relief beneficiaries"; through the administrative system if they have not violated any laws, or committed only minor infractions; and through the juvenile justice system.

Human Rights Watch's research indicates that none of these systems or governmental bodies is fully meeting its obligations to protect and care for street children and to ensure their rights are protected.

### **Relief, juvenile justice, and administrative policies for children in Vietnam**

Vietnam's social protection system, put in place after de-collectivization in 1988, is responsible for the care of vulnerable people, including homeless children, orphans, children with disabilities, and street children. Social relief policies are developed centrally but implemented at the local level.[32]

Vietnam's social relief policies call for provision of safety nets in poor areas and in localities that suffer from periodic environmental, economic, or agricultural shocks. MOLISA, along with the ministries of finance, health, education, and agriculture/rural development, exercises state management over social relief work. People's Committees manage "social relief beneficiaries," who are sent to local Social Protection Centers (as already noted, these are also called Social Charity Establishments or SocialReliefCenters), when they face exceptional difficulties or are unable to support or house themselves.[33]

The "regular social relief regime" covers the needs of orphans, "lonely elderly," seriously disabled persons, and chronically-ill mental patients.[34] The "irregular social relief regimes" covers people who fall into hardship because of natural calamities or death of a family member, as well as "wandering beggars"-which includes street children. "Wandering beggars" are to receive assistance during the time they are "gathered and waiting [to be] sent back to their residence place." [35] Wandering beggars are to receive 5,000 dong per person per day for no more than 15 days during the time they are held in Social Protection Centers.[36]

### **Treatment of juvenile offenders**

Vietnam's Penal Code establishes the age of criminal responsibility at 14 for criminal offenses and 12 for administrative offenses.[37] It provides for certain exemptions for juvenile offenders under the age of 16, and allows early release of juvenile offenders who have shown progress and served half their sentence.[38]

The Penal Code calls on courts to consider sanctions that are "educative and preventive" when dealing with juvenile cases. Locally-based "education measures" aim to "create conditions for such persons to labor and study in the community and prove their repentance right in the normal social environment under the supervision and with the assistance of the [local] People's Committees, social organizations, and families." [39]

Vietnam's Law on Child Protection, Care and Education (Law on Child Protection), promulgated in January 2005, calls for law enforcement institutions to work with families, schools, and society to "educate" children who have violated laws:[40]

The handling of children committing acts of law violation is aimed mainly to educate and help those children to realize their wrong-doings, redress such wrong-doings and make progress.[41]

In relation to street children who are not found to have violated any laws, the Law on Child Protection calls for People's Committees at all levels "to create conditions for street children to live in a safe environment, not affected by social evils." [42]

### **The administrative system: No charges, no courts**

Street children who have not committed any crime (or only minor offenses) are usually dealt with through Vietnam's administrative system when they are picked up by the police, rather than the criminal justice system.[43] As an administrative matter, the children are not formally charged with a criminal offence, and thus the due process rights that normally precede someone's detention, such as court proceedings and a hearing, are not required by Vietnamese law in order for children to be sent to the Social Protection Centers.

The administrative system provides that penalties for "offending" behavior can include warnings, fines, community-based "re-education," and other sanctions, such as placement in a SocialProtectionCenter.

A Vietnamese researcher explained how Social Protection Centers work in reality:

[They] are places for the temporary custody of those who have been picked up by the district authorities during their campaigns. These centers are for people who have not committed any serious crimes, but whose behavior and lifestyle may pose a threat to social order and security. They are, therefore, gathered or arrested without any order from the court or from any judiciary bodies.[44]

A child deprived of his or her liberty, whether via criminal law or administrative procedures, is entitled under international law to the same basic rights. While diverting children away from the criminal justice system is an appropriate goal, dealing with children in conflict with the law by way of administrative measures does not deprive them of or in any way diminish their rights. The practice documented

by Human Rights Watch of placing children picked up on the streets in detention in Social Protection Centers without judicial or other independent oversight is fundamentally incompatible with international human rights law.

### **Requirements for Social Protection Centers**

According to the Implementation Decree of the Law on Child Protection, "child support establishments," which include Social Protection Centers, are required to provide:

Distinct education for [disabled] children; education and re-education for children in conflict with the law; detoxification for drug-addicted children; management, nurturing and education for children of social sponsor groups [i.e. children who are social relief beneficiaries]; provision of accommodation, meals and other services for children in special circumstances.<sup>[45]</sup>

According to Decree 25, which regulates Social Protection Centers, the government is responsible for examining and inspecting the institutions' adherence to the law, handling violations, and settling "complaints and denunciations about violations of policies and regimes related to operations" of the centers.<sup>[46]</sup>

Organizations and individuals found to have violated laws regulating Social Protection Centers are to be disciplined, administratively sanctioned, or examined for penal liability, depending on the nature and seriousness of their violations.<sup>[47]</sup>

### III. Trang's Story: From Dong Dau to Ba Vi and Back to the Streets Again

The following is an account from a boy we will call Trang, who was arrested and detained at Dong Dau twice during 2004, when he was 17. He was subsequently sent to Ba Vi for three months. He spoke to us two weeks after his release from Ba Vi. [\[48\]](#)

#### **First arrest (March 2004): "They never gave me any reason "**

I was shining shoes at the lake [in Hanoi]. I didn't see him coming, but a man in plainclothes came up behind me and grabbed me. He took me to the police station. I was there until 11a.m., when they took me to Dong Dau center.

When he was taking me to the station I was struggling to get free. He held me very tightly, and when we entered the station he beat me. He punched me in the head three or four times with his fist, and he kicked me in the legs a few times. Then I was handcuffed.

They never gave me any reason, but I knew I was arrested because I was shining shoes. When I was in the police station, they made a list of the items in my tool box and confiscated it. They took me in a truck, like a van, to Dong Dau.

Dong Dau was very dirty and smelly. We were locked in rooms all day, and the blankets had not been washed for a long time. There was a bucket used as the toilet-it was there in the room with us all the time. Every day, we were allowed out only twice, for a maximum of almost an hour. But most days, it was just half an hour at a time.

The room had just some plank beds on the floor for us to lie on. The window was always closed. It was in the door, with bars across it

When we were let out, all we could do was to go to the toilet and eat. We could also shower, but usually we did not have enough time. Anyway, the water was very dirty. The conditions were filthy. When people arrive at Dong Dau, usually they get so sick because of the conditions that they cannot eat for the first few days. They just vomit. But after a few days you get used to it.

#### **"They beat me more when I asked them to stop "**

There are all kinds of people in Dong Dau, including students and soldiers, and anyone who is picked up sleeping in parks or on the street late at night. There were ten people in my room. The oldest was age 50, and the youngest was 16 years old.

The prison staff saw my hairstyle was fashionable-they beat many people for that. If you had an unusual hair style, they would beat you and cut it. Also they would beat you for many silly reasons, like talking too loudly. If a new person arrived at the center and was recognized by somebody already there, they would be excited and talk loudly. The guards would go into the room, make everyone kneel down, and then beat everyone. They even beat a boy with deformed legs and made him kneel in the hot sun.

Ninety-nine percent of the people wanted to escape. I tried, too. On the third day, they let me out to sweep the courtyard. I tried to jump over the fence, but when I jumped back down I landed on shards of glass. It was put there to stop people escaping. Some people saw me, so I ran into the center to hide. They found me.

They took me to a courtyard, and then went to find a truncheon. First they kicked me twice in the chest, and I couldn't

breathe. I was sitting down. Almost everybody was watching, because all the rooms faced this courtyard. They used the clubs to beat me. They hit me so much and so hard that at the end, the club was bent out of shape.

They stood in a circle around me. Two people were beating me at the same time. After they were finished, one more came with another truncheon. He held it with both hands [he demonstrates the technique: the club is held over his head with two hands, and swung down]. I don't know how many times they hit me, but it went on for a long time.

I screamed a lot, begging for them to stop. But they just beat me more when I asked them to stop. They hit me everywhere, except my head. They hit me on the front and back.

When they sent me back to my room, I couldn't walk. The three men carried me back. For one week after, a boy named Hai had to help me go to eat and walk about.

They didn't even give me a bandage. I was bleeding so much, and they didn't even give me a bandage. My legs were covered in blood, but it was blood from the cut on my foot [he shows the scar on his foot from the glass]. I was bleeding so much that the nurse secretly brought me bandages and told me not to tell anyone.

I had bruises everywhere-all over both my arms and on my chest and legs and back-everywhere. I was in very bad condition. Some other [prisoners] helped me

### **"I have read in the newspapers they help you go home "**

After two weeks, when they were getting ready to release me, I had to write a commitment that I would do no more shoe shine. I have read in the newspapers that when you leave these centers, they help you go home, and the government gives your family 150,000 dong [U.S.\$9] a month for the next three months. That's totally wrong. It's fiction. It never happens. Sometimes the prisoners had no money, so someone else would give them some to help them get the bus. And they'd get a beating from the guards. Nobody was even allowed to share money.

When I left, I went back to shining shoes. I was very afraid, but I need the money to go home to my family.

### **Second arrest (June 1, 2004): "How bad could 15 days be? "**

The second time I was arrested was on Children's Day, June 1. I was sitting by the lake. I wasn't shining shoes. The security guards and the ward police came to arrest everyone. They saw me holding a plastic bag and knew I had shoeshine tools inside. I saw them and ran across the road into the market. They followed me in and caught me.

They said nothing-they just grabbed me and put me on the truck to Dong Dau. I was never told why I had been arrested. As I entered the grounds [of Dong Dau], all the staff recognized me. They didn't do anything but asked a lot of questions and checked to see if I was a drug addict. I filled in a form, and they locked me in a room. I was there for 14 days.

I saw a lot of people beaten. Some people wanted to get out of their room, and they were banging loudly on the door. The guards came in, and they beat everyone in the room. There was one man who was joking when he first got arrested. He joked, 'How bad could 15 days be?' So the guards showered him with blows from clubs. It was very serious-he couldn't even walk.

I saw a mother and son-the son was three or four years old. The guard sent his mother away somewhere, I don't know

where, and put the child into my room. He was crying so much. The guards asked us to keep the child. He cried all night. This happened after I had been there for one week, and he was still there when I left.

Nobody in my room was sick. But in the women's section upstairs, someone had a really bad stomach ache. She was screaming so loudly, but nobody came to help.

The room was just like the last time: dirty. It was kind of cold. There were two fans and one light-both stayed on 24 hours a day-and one window in the door. There was nothing to do. We just talked all day to pass the time. When we weren't talking, we slept.

The food was terrible. Most people just nibbled at it... The food was old; the rice was often left-over or burnt. We ate twice a day-usually rice and two pieces of meat about the size of my thumb. It was never enough, and it didn't taste good. It's cooked by other prisoners and they are not used to cooking for so many people. The staff doesn't have to do anything-they just call us and we do the work.

On the day I was arrested the second time, I was sure I would be sent right to Ba Vi, but they kept me for 14 days at Dong Dau. I thought I'd be released after that, but I wasn't. They sent me to Ba Vi.

#### **To Ba Vi (June 14, 2004): Another commitment**

I arrived at Ba Vi in a truck with 19 other people. At first I thought everything would be the same as Dong Dau, but it was very different. In each room, people vote for the head of the room. In the first few days I was there, everything was fine.

Every day there was just two hours work outside. Then I could go back to the room and play chess. The water was better and there were more showers. But if you showered too much, you'd develop a rash. One time I had a fever and the staff gave me some medicine. There is a hospital nearby.

I wouldn't say I liked Ba Vi, but staying there was okay. But there was no freedom.

The staff were okay. They talked to us like normal people. If we didn't do anything to them, they didn't do anything to us. But if the staff beat someone, they beat them a lot. I saw this a lot, but only when people didn't want to wash their dishes after eating, or if we were fighting with each other. I was beaten three times with a stick because I saw a beehive and threw rocks at it. The staff saw and told me to stop, but I threw one more. They called me over and beat me three times on my arm, wrist, and butt.

Afterwards, my wrist was swollen a little, so I put some ointment on it. I went to ask some women prisoners for medicine and they helped me out.

I saw many people beaten. The youngest was 14 or 15. No one was seriously injured-they were left with some bruises. They would beat us in the head or put us against the wall and beat us on our butts with their clubs.

#### **Release (September 14, 2004)**

When I was leaving, I signed another commitment that I wouldn't go to do shoe shine. They advised me to go to the countryside. They used to give people 20,000 dong (U.S.\$1.25) when they were leaving, but now they only give 10,000 (\$0.62). We got all of our possessions back. I walked one kilometer to the highway and caught a bus from there.

Now, I am shining shoes again. I want to go home, but I don't have enough money.

## IV. The Evolution of Vietnam's Approach to Street Children

Vietnam's distinction as the second country in the world to ratify the UN Convention on the Rights of the Child (CRC)<sup>[49]</sup> in 1990 was followed by steps to legislate for the protection of children. In 1991 Vietnam's National Assembly passed a Law on Child Protection, Care and Education.

In the early 1990s, the government established the Vietnamese National Commission for Children. It was later combined with the family planning ministry and renamed the Committee for Population, Family and Children (CPFC).<sup>[50]</sup>

At a national conference in December 1991, attended by senior government and Party officials, international donors, UN agencies, and diplomats, participants issued a strong statement of support for the Convention on the Rights of the Child:

We are deeply conscious that children constitute the happiness of the family and are the future of the country. The protection, care and education of children are the responsibility of the State, society and of every family. The CRC is an opportunity for each country to take an active role in this noble cause.<sup>[51]</sup>

### 1980s: Institutionalization

Until the early 1990s the government's response to the problem of street children was largely to arrest them and send them to state holding centers:

The main response of the state was to round up street children and put them in state institutions from where they either escaped (if it was possible to do so) or were released after some time to their families. Most children who escaped or were released from confinement returned to the street, often to be picked up and taken back again. Those institutions provided varying but generally poor standards of education, vocational training and recreation for the children. In reality they were not much more than holding centers.<sup>[52]</sup>

During the 1980s government officials were skeptical about "social work" approaches to social problems, believing instead that such problems should be solved by policies set by the Communist Party and implemented by government institutions or mass organizations,<sup>[53]</sup> with communities sharing some of the responsibility.<sup>[54]</sup>

### New directions in the 1990s

By the Eighth Party Congress in 1996, the government was pursuing an ambitious time frame for economic development. It began to develop new plans for social policies, including hunger and poverty alleviation, job creation, and the campaign against social evils.<sup>[55]</sup>

Influenced in part by foreign NGOs, which started working in larger numbers in Vietnam in the early 1990s, the government began to consider different approaches to the problem of street children, such as establishing informal drop-in centers and using outreach workers to approach children on the street.<sup>[56]</sup>

In 1998, the prime minister issued a directive to "prevent and tackle" the problem of street children.<sup>[57]</sup> It presented sweeping goals but offered few details on implementation, solutions such as rehabilitation, and especially, penalties for abusers.

In 1999, Prime Ministerial Decision 134 outlined programs to protect children in special circumstances, including street children.<sup>[58]</sup>

The Ninth Party Congress in 2001 used the term "child rights" for the first time in a Party document:

The policy to take care and protect children focuses on implementing children's rights, creating favorable conditions for



them to live in a safe and wholesome environment, developing harmoniously their physical and mental health, and their moral standards, and creating chances of education and entertainment for orphans, handicapped children, and those living in special disadvantaged conditions.<sup>[59]</sup>

A National Plan of Action for Children for the period 2001-2010, a prime ministerial decision, was adopted in February 2001.<sup>[60]</sup> In terms of protection of children, the plan outlines four key objectives: a) ensuring the protection of the maximum number of children against discrimination, exploitation, and abuse, b) increasing support and assistance for children in need of special protection, c) ensuing early discovery and strict handling of child abuse cases, and d) preventing violence among children and minimizing accidents and injuries to children.<sup>[61]</sup>

### **Drop-in centers and street-based services**

Since 1999, the Committee for Population, Family and Children has operated drop-in counseling centers for street children in each of Hanoi's 16 districts. (These are different from Social Protection Centers.) The CPFC also implements a UNICEF-initiated Project for the Protection and Care of Street Children, which focuses on Hanoi and several key provinces from which street children originate.<sup>[62]</sup> The program aims to provide educational, recreational, and counseling support for street children at drop-in centers in several of Hanoi's districts. The European Commission and Plan International also provide funding support.

The centers are staffed by volunteer "collaborators," who may be retired women, members of the Women's Union, or commune-level employees of People's committees. However, social work remains a relatively new field in Vietnam, and there are few trained social workers able to assist street children.<sup>[63]</sup>

The centers collect data about street children such as family income and health statistics, and provide basic counseling services and information about personal health, drug abuse, HIV/AIDS, and sex education. Few of the collaborators have been formally trained in social work so UNICEF provides training for them as well.<sup>[64]</sup> The program also organizes monthly "children's club" meetings for about 100 children per district per month.<sup>[65]</sup>

### **Ongoing institutionalization and street sweeps**

Despite the establishment of CPFC drop-in counseling centers, it is clear that the government never fully abandoned the approach of involuntary institutionalization or detention of street children.

In theory, police who pick up street children who have not committed any crime are supposed to take them to drop-in centers, where staff is supposed to try to find out where the children are from and if possible, reunite them with their families. In practice, this rarely happens.<sup>[66]</sup>

Police often bypass the drop-in centers and send street children directly to a SocialProtectionCenter, especially during official round-up campaigns.

"The CPFC is supposed to manage the problem, but in fact police often send street children to Social Protection Centers," said a staff person from an international organization in Hanoi. "There's no coordination, and no support or supervision once they're in the [centers]."<sup>[67]</sup>

A social worker told Human Rights Watch: "CPFC denies that children are being arrested and imprisoned. Their claim is that they meet children on the street and ask them if they have families they can be returned to. If the children say 'yes,' CPFC helps them go back to their families. If 'no,' they are taken to a center to 'protect' them. This is usually Dong Dau detention center."<sup>[68]</sup>

In advance of the South East Asian Games at the end of 2003, the government increasingly authorized street sweeps and detention of the most visible street children (see below). The policy appears to have continued to the present time, culminating with sweeps prior to the November 2006 APEC meetings in Hanoi.

Terre des hommes Foundation, which works with street children in Vietnam, has described the police sweeps:

During the round-up campaigns, which are decided by higher authorities, the police are instructed to pick up vagrant people of all categories, including children. These campaigns are frequent and generally last for weeks or even months each time, usually in advance of the major national festivals. The people collected during these operations are sent directly to transit centers in the city [i.e. Social Protection Centers], from where they are sent to the camp or institution, which corresponds to their particular category.[69]

Decisions to launch campaigns to clear the streets of children who are begging or bothering tourists come as directives from the local People's Committee or DOLISA.

### **The 2003 crackdown**

For those that still have parents but prefer freedom in the street, we will give them some lessons about life. Hanoi needs a major beauty treatment, especially before the games begin in December.

-Nguyen Quy Thu, director of Hanoi Children and Family Committee, regarding the 2003 clean-up drive[70]

One example of an officially-authorized round-up campaign in Hanoi is the crackdown that took place in 2003, as the date for the international South East Asian Games approached.[71]

In April 2003 the CPFC announced that it would be implementing a new plan to swiftly decrease the numbers of children on the street in advance of the upcoming SEA Games. The plan called for street children who lacked adult care to be sent back to their families in their home provinces if at all possible. Otherwise they were to be sent to a Social Protection Center. Efforts would be made to ensure that voluntary drop-in centers in Hanoi did not act as a magnet for migrant children in the countryside.[72]

MOLISA followed up in August by issuing a decision to send street children, beggars, drug addicts,[73] and vagrants to Social Protection Centers in advance of the games.[74] The Vietnamese state media publicized the campaign, which was scheduled to start on September 1:

To ensure the success of the campaign authorities will deploy 20 inspection teams to locate people or beggars who follow foreign tourists trying to sell things or to beg. Order-keeping police in districts will bring together those found and send them to protection centers...[75]

Hanoi residents were encouraged to call the city officials when they spotted homeless people.[76] Security officials were promised 50,000 dong (U.S.\$3) for each homeless person picked up and sent to a center.[77] By the end of 2003, government media stated that the campaign, "[using] some rather dramatic solutions to solve the problem," had removed many children from the streets and sent them home.[78]

### **2004: More policies, little action**

In February 2004 the prime minister approved Decision 19, described as a "comprehensive strategy" to prevent and solve the situation

of street children and other children at risk.<sup>[79]</sup> The ambitious decision aimed to reduce the numbers of street children by 90 percent by the year 2010 and provide 70 percent of street children with support for family reintegration.<sup>[80]</sup>

As with other directives, Decision 19 pushes local officials to focus on numbers, rather than concrete solutions to the underlying problems pushing children onto the streets.

The 2004 annual goals were to reduce the number of street children by 20 percent; child victims of sexual and drug abuse by 5 percent; and children in difficult conditions by 5 percent. In addition, the city of Hanoi planned to move 100 percent of its drug addicts to detoxification centers.

### **The situation now**

In May 2006, a Viet Nam News Agency article announced that Hanoi had "basically wiped out homelessness among children."<sup>[81]</sup> According to Children's Department Chairman Nguyen Dinh Thiet, the campaign owed its success to the "increasing involvement of grass-roots authorities, who contributed in reducing the number of street children and worked on creating jobs for those who returned to their villages."<sup>[82]</sup>

In contrast to the government's claims, street children, former street children, and people who work with street children in Hanoi told Human Rights Watch in 2006 that the population of street children has not decreased, but only shifted to other parts of the city.

"The kids have left the lake. Some come up to work the streets in tourist areas away from the lake," said a postcard seller.<sup>[83]</sup> "Many get arrested and sent to Dong Dau or Ba Vi. It has gotten worse in the last two or three months."

Street children interviewed by Human Rights Watch in March and August 2006 confirmed that high-profile places such as Hoan Kiem lake remain off limits. "If we go near the lake we get arrested," one shoe shiner told Human Rights Watch in March 2006. "The lake is 'finished' as a place for our work."

A former street child told Human Rights Watch in December 2005: "The situation for street children has not improved since the cleanup campaign for the SEA Games—they have just gone underground."

Another street vendor told us that the police sweeps have continued into 2006. "By the lake we have a lot of problems so not so many people dare to work there now," he said. "The police are always making trouble for us." He said that "many more" street vendors were arrested early in 2006 than the previous year, possibly due to the Party Congress in March.<sup>[84]</sup>

A Vietnamese researcher based in Hanoi told Human Rights Watch in August 2006:

It's still a huge problem. There are millions of poor farmers in Vietnam who can't afford to feed their children. Those children go to Hanoi. The government has campaigns to clear the cities of street children and beggars. After 2003, some returned to their families, but after a while, many ended up back in the city again. The government was supposed to give the families some incentive to keep those children at home, but the incentive is not enough. So the children return to the city, but to other areas, where they can avoid the police.<sup>[85]</sup>

Another long-time resident of Hanoi said: "I had thought that all this was quieting down with the South East Asian games now long over," he said. "But it seems that arrest and arbitrary detention is now the norm."<sup>[86]</sup>

## V. Human Rights Abuses of Street Children

I was walking, not paying attention, on Hang Bac Street, near the lake. Someone grabbed me and put me in a truck. I didn't know anything. I thought I would be sent home but realized later that I was being sent to a camp.

-Minh, a 15-year-old boy working as a shoe shiner, 2004

Although less visible in Hanoi's tourist areas than in the past, street children continue to be vulnerable to routine sweeps by police, mistreatment, and subsequent arbitrary detention. Their low status in Vietnamese society and their lack of visibility means that when they are picked up and detained, very few people know where they have been sent, nor is there oversight regarding their treatment. They are largely held incommunicado: most have no contact with family, lawyers, or others who could help them. This opens the door to even more abuse.

Vietnam is a party to both the International Covenant on Civil and Political Rights (ICCPR)<sup>[87]</sup> and the UN Convention on the Rights of the Child (CRC). Both human rights treaties set out rights to which children are guaranteed under international law and which Vietnam has agreed to respect, protect, and fulfill in practice.<sup>[88]</sup> The experience of street children who are arrested and placed in detention at facilities like Dong Dau indicates that street children are not in practice enjoying the protection or exercise of many of these rights.

### Round-up campaigns

Police in Hanoi routinely conduct round-up campaigns to clear public areas of homeless people and street children. Of the street children who have been picked up by police in Hanoi, a 2003 survey found that more than half said they were rounded up as part of mass sweeps and arbitrary round-ups, rather than on suspicion of committing specific crimes.<sup>[89]</sup>

Most of the children are picked up for activities that are not specifically defined as crimes: shoe shining, begging, and street vending. Some are detained for lack of identification or residence permits (*ho khai*).<sup>[90]</sup>

"Street cleaning" campaigns result in the rounding up and detention of large numbers of children living on the streets, are by their nature arbitrary and violate several of Vietnam's international legal obligations. Arbitrary arrests and detention are contrary to both the ICCPR<sup>[91]</sup> and the CRC.<sup>[92]</sup> Any deprivation of a child's liberty must be carried out in accordance with law, be for a legitimate purpose, be for as short a period as possible, and take place only as a last resort.

The rounding up of children living on the streets that have not or are not reasonably suspected of having committed any crime is a policy of dubious legitimacy. Where this policy is not implemented for the purpose of reuniting children with family or guardians, or of placing them in appropriate and adequate alternate care where they can access education and health services, its legality comes under further question.

Governments may and should pursue legitimate policies that seek to prevent children from living on the street and protect them from harm and exploitation whilst on the street. Indeed, the CRC requires the state to provide special protection and assistance to children who are temporarily or permanently deprived of their family environment.<sup>[93]</sup> Nevertheless, our research suggests that the round ups of children in Hanoi often are primarily carried out to make them less visible-particularly to visitors to Vietnam-rather than to further their best interests. The combination of the questionable authority on which police detain these children, the purposes for which they are detained, and the absence of any judicial process or oversight for their detention renders the detention of these children following massive sweeps arbitrary and unlawful under international law.

Most children interviewed by Human Rights Watch said they were picked up from public places-parks, restaurants, tea houses, and streets-by between two and four regular police officers or members of *Canh Sat* 113 (an emergency mobile police force), sometimes together with brown- or green-uniformed government security guards (*bao ve*), who patrol the lake areas and other tourist spots.<sup>[94]</sup>

In some cases, many children are rounded up at the same time and put into police vans, which are often stationed across the street from HoanKiemLake.

A typical arrest of a street child might involve being suddenly grabbed by police or security guards on motorbikes, being driven to the local ward police station for processing, and then driven in a police van to a Social Protection Center. One boy described his arrest during a police sweep a year earlier, when he was 18:

I was shining shoes alone on Phu Doan street. The police caught me. Two motorbikes with four policemen stopped. One man grabbed me from behind and put me on his motorbike. I was in the middle; he was at the back.

They took me to the police station. I ran but didn't get very far. Two motorbikes chased me and brought me back to the station. I was slapped once on the face.

I was put into a van with 12 other people-mostly newspaper vendors and shoe shiners.

I thought it would be alright if I paid a fine. But no, I was sent to Dong Dau.<sup>[95]</sup>

### **Police custody**

After arrest, the children are typically brought to a nearby police station where their personal details are recorded, their possessions confiscated, and they are held for up to eight hours, until enough people have been gathered to fill a police van to transport them to Dong Dau.

### **Denial of due process**

The children interviewed by Human Rights Watch say they are rarely told why they are being detained, rarely charged with any offence, rarely provided with someone to represent their interests (not to mention access to legal counsel), and rarely provided with an opportunity to challenge their detention. Social workers interviewed by Human Rights Watch confirmed that this is often the case.<sup>[96]</sup>

While it would appear that most street children are detained in accordance with administrative laws, rather than the criminal law, this does not deprive them of their basic rights under international law. These include the right to be informed of their reasons for detention, access to legal representation, permission to notify their family of their detention, and the right to challenge their detention.<sup>[97]</sup>

The children interviewed by Human Rights Watch said that police did not allow them to contact their families or friends while in police custody, nor did the police inform their parents or guardians that the child had been arrested and was being sent to Dong Dau. A social worker who works with street children in Hanoi confirmed that this is a regular pattern, and described one particular case:

Lan, a nine-year-old girl, was selling chewing gum when plainclothes police walked up from behind and carried her away. The police never told her what she did wrong. Her family searched frantically for her before inquiring at the police station. They were told she was sent to Dong Dau after being held for one hour at the station. With the assistance of a lawyer, they embarked on a bureaucratic campaign to free the child. After two weeks in Dong Dau, she was sent to Ba Vi for a further six months before her family finally secured her release.<sup>[98]</sup>

Vietnam's 2003 Penal Procedure Code states that authorities must immediately notify children's families or legal representatives after children are arrested or detained.<sup>[99]</sup> The evidence that street children are not afforded these basic rights indicates that Vietnamese national laws as well as its international legal obligations are being violated.

### **Abuses in police custody**

Many of the street children interviewed by Human Rights Watch reported that they were physically abused by police during their arrest and detention at police stations. Trang described being beaten at the police station:

I was struggling to get free. [The policeman] held me very tightly, and when we entered the station he beat me. He punched me in my head three or four times with his fist and kicked me in the legs.<sup>[100]</sup>

Other children recounted abuse such as being struck on the head with wooden sticks; being tied with electrical wire and hit; being slapped; being struck with electric batons; and having their arms twisted.<sup>[101]</sup>

Private or government security guards in markets and parks who sometimes help round up children for the police are also guilty of ill-treating street children. A 14-year-old boy who collects plastic bags in Dong Xuan market described how he was beaten by a guard in the market before being sent in a police van to Dong Dau.

I was beaten in the market where I work. The head guard arrested me. My friend scolded him for doing that. The guard got mad and beat my bum with a wooden stick. Many of my friends got arrested too.<sup>[102]</sup>

Such treatment of minors and excessive use of force is contrary to international standards on child protection, and Vietnam's international human rights obligations in general which prohibit corporal punishment of children in custody and forbid use of force by law enforcement officers beyond that which is strictly necessary in the circumstances (see further below).<sup>[103]</sup> In addition, Vietnam's Law on Child Protection prohibits torture and mistreatment of children, and corporal punishment of juvenile offenders.<sup>[104]</sup>

According to Christian Salazar-Volkman, a consultant for UNICEF, police in Vietnam have been trained in juvenile justice standards.<sup>[105]</sup> She states that awareness-raising campaigns and workshops in Hanoi have "improved the conduct of Vietnamese police towards children in conflict with the law. However there are still reports of beatings of children by the police. Surveys of street children reveal fear of being arrested by the police, as harsh treatment, including shouting and beating, might take place."<sup>[106]</sup>

### **Fear of police**

Periodic street sweeps by police that lead to children being detained in inappropriate facilities and at risk of abuse mean many children try to steer clear of the police. Even though street children are vulnerable to abuses on the streets by gangs, private security guards, pimps, and pedophiles, many of those we interviewed said they live in fear of the police and avoid them even when in need of protection.<sup>[107]</sup>

In a 2003 survey, thirty-eight percent of Hanoi street children said their greatest fears and risks included being picked up or beaten by the police, or sent to jail. <sup>[108]</sup> Some children said they were reluctant to seek medical treatment when ill for fear the police would be called and send them home. Only 1 percent of the children surveyed indicated they would seek assistance from the police.

"I evade the police by running into the staircase of an apartment block whenever I hear the siren," said Danh, a 17-year-old orphan from Thanh Hoa province. "I've had to do this many times. Every time I hear the siren, I feel afraid. I wouldn't know what to do if I get arrested, so I run as fast as I can." <sup>[109]</sup>

Canh, a 17-year-old from Hung Yen said he felt his work as a shoe shiner was dangerous "because of the police. If I'm arrested, I'll be sent to detention camp where life is hard." [110]

### **Detention at Dong Dau Social Protection Center**

As already noted, the first time most Hanoi street children are picked up by police, they are sent to Dong Dau Social Protection Center, located in Dong Anh district on the outskirts of Hanoi. The typical stay is two weeks. Detainees are of all ages and include prostitutes, drug addicts, shoe shiners, porters, street vendors, rubbish collectors, newspaper boys, vagrants, and beggars.

In theory, Dong Dau's mandate as a Social Protection Center should be to provide community-based rehabilitation services. In reality, it is a short-term jail where they have been sent without judicial intervention, oversight, or redress. It is a form of arbitrary punishment that leaves children worse off when they leave than when they went in.

A 15-year-old boy described his arrival at the center:

I got to Dong Dau at 5 p.m. When I arrived I was car sick-the truck [paddy wagon] was totally enclosed so we couldn't even see out. I fell down getting off the truck. After that, I filled out the form asking about the details about my family. Then I was sent to a cell. I asked if I could contact my family, but they didn't let me.

On the first day, eight people came with me. We were all very sad. Some people cried all day, and they didn't eat anything. When I was lining up for dinner, I didn't feel like eating anything, so I was moving slowly. So were the others. The guards came and made us kneel down in the middle of the room. We weren't allowed to eat anything. The first time we got to eat was the next day at 10 a.m. [111]

Children who have been detained at Dong Dau told Human Rights Watch that it looks like a prison. It consists of a series of concrete holding cells, surrounded by a three-meter tall wall topped by barbed wire. [112] Outside the cells is a public toilet (two rooms, one meter square) and bathroom (four to five meters square with buckets and a water tank) and a dining hall. None of the children described any recreation, education, training or rehabilitation activities or facilities at Dong Dau, and none received any medical care during their stay there.

Upon arrival, detainees are told to line up until their name is called. They must fill out a form giving their address in the countryside and information about their family. In some cases staff persons interview detainees about their personal information, filling out the forms for them. The children are photographed, holding a card with a number on it.

Children interviewed by Human Rights Watch said that staff does not inform their families about where they are, which means that many children do not have visits or other communication with family or friends. [113] Moreover, the facility-located 30 kilometers from the center of Hanoi-is not easily accessible to most families.

### **Abuses at Dong Dau**

Although Vietnam's Law on Child Protection prohibits the torture, mistreatment, or use of corporal punishment against children, [114] as does Vietnam's Constitution, [115] children interviewed by Human Rights Watch gave vivid accounts of serious abuse at Dong Dau-including instances of corporal punishment, collective punishment, placement in isolation, deprivation of food and medical treatment, and denial of family contact.

Most of the children who spoke to Human Rights Watch said they are provided little or no information about rules and procedures.

Despite this, children also reported that they could be beaten if a guard decided that they were not complying with the rules (see below). One child said that some rules are listed on the notice board in the canteen. He said the rules are: no fighting in the room; no food in the room; and presents from visitors are not allowed to be kept in the room but must be handed to guards.[\[116\]](#)

None of the children we spoke with were aware of any process for challenging the legality of their detention or making complaints about their conditions or treatment.[\[117\]](#) International standards on juvenile detention require that children in detention centers should be promptly and clearly informed of the facility's regulations, as well as their own rights and obligations during detention.[\[118\]](#)

### **Beatings**

All of the children interviewed by Human Rights Watch have witnessed beatings of children and adults by staff at Dong Dau: at least six of the 11 who had been to Dong Dau had been beaten themselves. Many of the children said they saw at least one person beaten every day. The beatings were often accompanied by abusive language.

Children said they, as well as adult detainees, were sometimes beaten for benign behavior which could not be interpreted as being in violation of any rules. One child saw an adult detainee beaten "very badly" for "looking at newcomers."[\[119\]](#) Another adult detainee was hit repeatedly with clubs by the guards after he made a joke.

New arrivals can be beaten simply because they are unaware of the center's procedures. One boy said:

I didn't know how to queue when I first arrived. The guards came and hit me with a rubber club. They hit me everywhere more than 20 times, on the right side of my back, lower and upper arms. It still hurts. [He gestures and points to different parts of his body with a wince.] Then they sent me back to the room without food. It was too painful to eat anyway. My back and right shoulder were swollen. I had scratches all over my arms. I asked to go back to bed because it was too painful. I just sat there. [Another prisoner] who was staying in the room had something to relieve the pain. I didn't eat for two days, it was too painful to eat.[\[120\]](#)

Some street children also use drugs. If this drug use becomes apparent through urine tests on arrival at the center, the children are sometimes beaten. Kien recounted:

I saw people beaten all the time in Dong Dau, every day. When we first arrived, some of us were beaten. They test us for drugs, and if the result is positive, they beat us very badly.[\[121\]](#)

Another child was beaten shortly after arrival at Dong Dau because a staff person thought he was lying about his personal information on the intake form.

When I had to fill out the form, he asked me how many times I had been there. I told him twice, but he thought I was lying. He thought I must have been there four times. I told him he was wrong, so he hit me. He used a rubber club to hit me all over my body. He hit me twice on the back and shoulder, and twice on the back of my thighs.[\[122\]](#)

A 22-year-old woman who had been working as a postcard seller in Hanoi since she was 15, said she was physically punished during her several stays at Dong Dau. "At Dong Dau, the police slapped me because I was too slow in responding to their questions," she told us.[\[123\]](#)

Children also reported that on occasion beatings would be administered to groups of children at a time, as a form of collective punishment for the wrongdoing of one or two others, and not because the individual children had done something wrong. For example,



Trang explained: "The guards would go into the room, make everyone kneel down, and then beat everyone."[\[124\]](#)

According to those interviewed, medical care was not generally provided after the beatings.[\[125\]](#)

### **Punishment of children who try to escape**

From the children we spoke with, it appears that those who try to escape are subject to particularly harsh treatment. 15-year-old Minh told Human Rights Watch:

Those who tried to run away were beaten with rubber clubs. Some got broken legs and arms. I don't know what happened to them after they were injured. We didn't see them [again].[\[126\]](#)

Another boy, Quoc, described seeing two staff persons—one of whom served as the camp doctor—beat an 11-year-old boy after he tried to escape.

He was afraid he was going to be sent to Ba Vi, so he tried to run away while we were eating. They caught him and hit him. One man punched him, the other man kicked him. They pushed his head into the wall and hit him with a rubber bludgeon. Everyone saw it.[\[127\]](#)

Several other boys tried to hide during the day so they could escape at nightfall, Quoc said:

One boy hid under the staircase. He intended to flee at dusk. But the pig keeper saw him and pinpointed him. They caught him and beat him. There were two more boys hiding in the water tank. When people pumped water in, they could not breathe and had to come out. They forced them to kneel down. They kneeled from morning to noon. They were not allowed to eat that day.[\[128\]](#)

Some of the accounts suggest that a form of solitary confinement was also used as a sanction. Fourteen-year-old Anh explained:

I saw one kid, bigger than me, who tried to run away. He was caught and beaten. Some [local] journalists had come for a visit. The boy pretended he had a stomach ache. He cried very loudly. The guards were afraid that the journalists would hear him. They locked him in a separate room. The guards waited till the journalists left then beat him. I saw a guard holding a black rubber club. He pulled the boy outside the room and hit him. He swore and shouted as he did it. I was in my room but saw through a small hole in the door. The boy was only a bit bigger than me. He was then locked in the room again, alone. Meals were sent to him in that room. I didn't see his injuries because the room was too far away. I heard him crying in the room when I walked past.[\[129\]](#)

### **Legal standards regarding use of force**

The UN Rules for the Protection of Children Deprived of their Liberty explicitly prohibit corporal punishment, placement in a dark cell, closed or solitary confinement, and collective sanctions which are considered to be inherently cruel, inhuman, and degrading.[\[130\]](#) The rules make clear that detention center staff must not: "inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhumane or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever."[\[131\]](#) Staff should ensure the full protection of the physical and mental health of children in detention, and report any violations to authorities.[\[132\]](#)

Under international standards, staff at detention centers may only resort to force to prevent a youth from inflicting self-injury, injuries to others, or serious destruction of property. The use of force should be limited to exceptional cases, after all other methods have been

exhausted and failed; it should never cause humiliation or degradation.<sup>[133]</sup> The use of restraint and force should only be used in accordance with prescribed regulations, in clearly specified ways, in "exceptional cases," under the authority of the director in consultation with appropriate staff.<sup>[134]</sup> Detention center officials should always inform family members of injuries that result from the use of force.<sup>[135]</sup>

The treatment of street children at Dong Dau as reported to Human Rights Watch indicates that staff disciplinary practices and use of force generally does not comply with international standards. On the contrary, the cases reported to Human Rights Watch suggest that the treatment of street children may at times constitute cruel, inhuman, or degrading treatment or punishment, in violation of Vietnam's obligations and the rights of the street children under both the Convention on the Rights of the Child and the ICCPR.

### **Conditions of detention**

The children who spoke to Human Rights Watch provided consistent descriptions of the cells they stayed in at Dong Dau. Their descriptions are of cells that are furnished with a light and fan that remain on, regardless of the time or temperature. The cells usually have a single window which is always closed. There is a communal bucket in the cell for use as a toilet. The bucket is emptied twice daily but the smell of excrement is permanently present in the cells.

Accounts vary on the size of the cells, with most describing overcrowded spaces holding between eight and thirty detainees. Most cells have plank beds; but some detainees must sleep on the floor. Some have dirty blankets. Children generally wear the clothes in which they are arrested, but are not allowed to wear their shoes or keep personal possessions. Children are routinely locked in the same overcrowded rooms with adults for long periods of time.

One boy described being locked in a small room (three by eight meters) with more than 10 people.<sup>[136]</sup> Another boy, Binh, described the cell in which he stayed:

There were windows, but they were shuttied with metallic string. Day and night was the same because the light was on all the time. There were some wooden surfaces to sleep on but there were not enough, so people who were there first got those. Others slept on the floor. We had just enough space to lie down. I couldn't even turn my body. Staying there for one day is like staying there for one month. We just sat in the room. We couldn't do anything.<sup>[137]</sup>

Separation of male and female detainees is the only apparent classification for the assortment of people of all ages detained at Dong Dau. Children as young as two to three years old can be detained together with adults as old as 79.<sup>[138]</sup> One toddler who was imprisoned with his mother was left on his own in the cell when his mother was subsequently sent away.<sup>[139]</sup>

"There were beggars who were 60- to 70-years-old, porters who were 35 to 40 years old," said one boy. "The youngest person was ten years old. He was a beggar and was carrying a baby of two- to three-years-old. The baby was also in the room."<sup>[140]</sup> Of the 28 people in his room, he estimated that about ten were under 20 years of age.

Detainees are released twice daily usually for half-hour periods during which time they can eat, empty the bucket of excrement, and use the toilet. If there is time, they can bathe in a communal room or wash their clothes. Many do not bathe at all for the duration of their stay because there is not enough time.

At meal times, if we ate quickly then we could go and shower. In my time there [14 days], I showered three times. The water there is not clean. I felt itchy after a shower.<sup>[141]</sup>

A 15-year-old boy said:

Early in the morning I was allowed to go and empty the piss bucket, so I had a few minutes to wash my face. But there was not time to brush my teeth or have a proper shower. I didn't have a shower the whole time I was there [18 days].<sup>[142]</sup>

The usual meal is a small bowl of poor quality rice with meager servings of tofu, pig neck, or fatty meat.<sup>[143]</sup> "I went to the camp fat, but left it thin," said Phuoc after 15 days' detention:

Every meal we had one bowl of rice, two pieces of meat—the neck of a pig, or small pieces of shrimp or tofu. Lunch was at 10 a.m., dinner at 4 p.m. So we were very hungry in the mornings.<sup>[144]</sup>

### **Legal standards for conditions in detention**

The UN Rules for the Protection of Juveniles Deprived of their Liberty outline the following standards that should be observed where children are placed in detention:

Children should be detained in small-scale "open" (as opposed to "closed") detention facilities with minimal or no security measures, enabling individualized treatment. Facilities should be identified in locations that provide access and contact between the children and their families.<sup>[145]</sup>

Children should not be detained with adults unless they are related.<sup>[146]</sup>

Food must be provided at normal intervals in sufficient quality and quantity; and clean drinking water should be available at all times.<sup>[147]</sup>

On a daily basis, children should be provided a suitable amount of time for free exercise in the open air. <sup>[148]</sup>

Sleeping accommodations should be secure and adequate, preferably in small dormitories or private rooms, with separate and clean bedding provided.<sup>[149]</sup>

Private, sanitary, and decent bathrooms should be provided, and children should be able to bathe as often as needed for general hygiene.<sup>[150]</sup>

Children should be provided suitable clothing, and allowed the option of wearing their own clothing.<sup>[151]</sup>

Adequate medical care, both preventative and remedial, should be provided.<sup>[152]</sup> Medical services should seek to detect and treat any physical or mental illness, substance abuse or condition. Any child who is ill, complains of illness, or exhibits symptoms of physical or mental problems, should be promptly examined by a medical officer.<sup>[153]</sup>

Detention facilities for children should provide appropriate rehabilitative services and should ensure privacy, sensory stimuli, and opportunities for association with peers, participation in sports, physical exercise, and leisure activities.<sup>[154]</sup>

The facilities should provide activities and programs aimed at promoting the child's self-respect and sense of responsibility, and encouraging attitudes and skills to help them reintegrate into society in productive ways.<sup>[155]</sup>

Education, vocational training, and access to a library should be provided.<sup>[156]</sup>

In sum, international law provides that children in detention should be treated with respect for their human dignity, giving special consideration to their particular needs as children in such difficult circumstances.<sup>[157]</sup> Their physical, mental, and moral integrity and well-being should be protected.<sup>[158]</sup> When children are detained as a last resort, the conditions in which they are detained must respect their human rights.<sup>[159]</sup> The conditions in Dong Dau described by children previously detained there do not meet these standards, and are likely to be hazardous to the children's health. Detaining children in such conditions violates Vietnam's legal obligations under both ICCPR and CRC.

## Visitors

Most of the children interviewed by Human Rights Watch do not receive family visits while they are detained at Dong Dau. They are not even allowed to write or call their families.<sup>[160]</sup> Several children allege that the staff demands bribes for allowing visits or extending visiting hours.<sup>[161]</sup> Other children allege that officials can be bribed by visiting families to release detainees, with one child citing a fee of 4 million dong (U.S.\$250).<sup>[162]</sup>

In November 2004, a Vietnamese newspaper alleged that family members of children in detention at Dong Dau were forced to pay bribes in order to visit their children, have the children released early, and prevent them from being sent for longer detention at Ba Vi:

If they want the arrested person to be released earlier or not to be sent to the center in Ba Vi, they must come to see Mr. K. If Mr. K got money in advance, the case will be quickly solved. After coming to an agreement on the price, Mr. K will get the signature of the director of the center for the release paper. Mr. K often threatened to send the arrested persons to the center in Ba Vi so their family will be scared and give money to avoid it.<sup>[163]</sup>

International standards provide that children in detention should be allowed to maintain regular contact with the outside world, including unrestricted communication with their families and, where relevant, lawyers.<sup>[164]</sup> Vietnamese law states that children in reform schools or detoxification institutions, "shall be regularly visited, spiritually encouraged and supported by their parents and guardians; the reform schools and detoxification establishments must facilitate the child to keep in touch with their families and alternative families."<sup>[165]</sup>

## Psychological impact of detention

Many children told us they were isolated, frightened, sad, and homesick during their stay at Dong Dau, as well as afterwards.<sup>[166]</sup> They said there was nothing to do during the 20-three hours a day they were locked in cells. They said they were offered no schooling,<sup>[167]</sup> no vocational training, no counseling, no social services-no activities at all.<sup>[168]</sup>

"We slept until we couldn't sleep anymore," Phuoc told Human Rights Watch. "We talked, sang stupid songs. It was very boring in the camp. I spent most of my time thinking. At first I thought about clever things, then stupid things."<sup>[169]</sup>

People who work with street children told Human Rights Watch that the children are withdrawn and depressed after returning from detention.<sup>[170]</sup>

Many children said they spend their time at Dong Dau thinking about their families, 15-year-old Duc told us:

I was always depressed, sad, bored. Many nights, I was lying on my bed, thinking how it's so unfair to be somewhere like this. I don't deserve it. There shouldn't be any violence in a SocialProtectionCenter.<sup>[171]</sup>

The violence that children experience and witness (described above) can also be traumatic. Duc said he became numb to the trauma while it was taking place:

[The guard] used a rubber club to hit me all over the body. Because I was already feeling so desperate and so depressed, it didn't hurt so bad."<sup>[172]</sup>

Months after his last release from Dong Dau, Lanh, a 15-year-old who had been sent to Dong Dau twice remained upset and traumatized. He burst into tears when describing the beatings he witnessed there, although he himself was never beaten:

My room was near the guard's room, and we could see through the [open] door. They beat children every day. We could always see and hear the beatings. It was terrible. Most of the staff were women-they were even more cruel than the men. They would beat the children for things like smoking. If they saw you smoking, they would beat you.[173]

Lanh was too distressed to continue the interview.

### **Circumstances around release**

Most children we spoke with said they are released from Dong Dau after around 15 days. A boy who was detained when he was 18 years old described his release:

I was very excited to hear that I could leave the camp. After meals, the staff would go from room to room with a list, calling out the names of those supposed to go home. All of us were very excited. Those whose names were called would stand up and be sent to a different room, where they waited for the bus. I just wanted to leave that place immediately.[174]

Before release, the children say they have to sign a paper stating that they will not return to the street and they understand that if arrested another time, the punishment will increase:

When we were released, the fattest staff person there made us sign a pledge not to work on the street anymore but go home when we got out. If we were caught again, the punishment will be doubled. He said: "Now you go home. Don't stay in Hanoi. Do you think that Hanoi is some kind of sweet cake? Don't think it's so simple-that you can just shine a pair of shoes, get 2,000 dong, no problem. You risk being arrested. It's best to go home." [175]

Personal belongings confiscated upon arrival are usually returned to the children. Some are given 10,000 dong [US\$0.62] to catch the bus back to Hanoi. Most of the children Human Rights Watch spoke with were then deposited outside the gate of the center, left to find their own way. Two children interviewed by Human Rights Watch were met by family members upon release, in one case after an uncle who was a policeman intervened for the child's release.

Vietnam's various policies and decrees regarding street children promote family reunification.[176] In addition, People's Committees are responsible for coordinating family reunification of children upon release from reform schools or detoxification centers by providing "specific solutions to support the child to progress and re-integrate with his or her family [and] community when coming back..."[177]

None of the children interviewed by Human Rights Watch, however, were reunited with their families upon release. While some may have been provided enough money to catch the bus to Hanoi, none were provided sufficient social services or financial assistance to enable them to meet their families or return homes in the provinces after leaving the center.

After release, the children we spoke with said that none of them, or their families, filed complaints about their detention, despite provisions in Vietnamese law that allow citizens to file complaints against government authorities.[178] Few know how to file a complaint, are offered any assistance to do so, or have any faith that filing a complaint will do anything other than bring reprisals.

All of the children interviewed by Human Rights Watch resumed working on the streets of Hanoi, some after a brief visit home. 14-year-old Quoc told us:

They did not give me anything when I was released. I took care of myself. I got my shoes back, people led me to the gate, that was it. I showed my paper at the gate and they let me out. I had barely enough money to get a bus to Long Bien bus

station. I slept on the bridge for four nights. I borrowed some tools from a guy I know, and went to shine shoes. After shining some shoes, I went back to the bridge. When I had enough money, I went back to the guesthouse.<sup>[179]</sup>

The children often return to the streets in much worse shape than before they went into detention, as described by a social worker in Hanoi:

When we first meet kids after coming out of [detention], they are normally extremely dirty, hungry, and have no money. They are commonly afflicted with scabies and untreated wounds, such as open cuts on their hands and arms. At least half of the time, the kids have visible bruises from beatings.<sup>[180]</sup>

### **Detention at BaViSocialProtectionCenter**

Street children who have been sent to Dong Dau more than one or two times are often sent for longer periods of detention to BaViSocialProtectionCenter.

Located 40 miles northwest of Hanoi in Ba Vi district of Ha Tay province, Ba Vi is classified as a "05-06" facility for mandatory rehabilitation of adult drug users and sex workers, according to social workers in Hanoi.<sup>[181]</sup> The detoxification center, meant for 800 people, had as many as 1,100 drug addicts staying there during 2004, according to state media.<sup>[182]</sup>

Descriptions of Ba Vi vary widely. It appears that there are at least two separate multi-building facilities, some for men and others for women. In addition to the detoxification center, Ba Vi reportedly includes an orphanage, programming for HIV/AIDS, and possibly an orthopedic center.<sup>[183]</sup> It is not clear if street children are held in a separate section, or mixed in with the others.

### **Conditions of detention**

The children Human Rights Watch talked to about their experiences at Ba Vi said conditions were better there than at Dong Dau. They were allowed to leave their cells to work, so it was not as boring, and the treatment was better. They are fed three times a day-"more food than Dong Dau, with some variety"- and one child said he was "never hungry."<sup>[184]</sup> The children say the water is better than at Dong Dau, but if they shower too often, they still get a rash.

A 15-year-old boy told us about his detention at Ba Vi a month after he was released:

When I got to Ba Vi, I expected it to be a bad place, but it was not so bad. It was better than my life on the streets. During the time I was there, I was never hungry. The living conditions were okay<sup>[185]</sup>

Nonetheless, problems remain. Children are usually detained at Ba Vi with no opportunity to challenge the legality of their detention, or to make complaints conditions or mistreatment there. Some of the street children we talked with were housed in cells that included adults, except for one child, who was sent to the section for orphans. Several children gave disturbing reports of being beaten by staff and other detainees, and seeing staff members beat other children. Some children also made serious allegations about inadequate medical attention to ill people.

### **Detained with adults**

Ba Vi is classified as an "05-06 Center" for adult drug users and prostitutes. "Technically those centers are not for kids but you often see them there anyway," said one staff person from an international organization in Hanoi.<sup>[186]</sup> Most of the children we spoke with stayed in rooms they described as cells, sometimes together with adults.

A 15-year-old boy told us that the 12 people in his cell ranged in age from 17 to thirty-years-old.<sup>[187]</sup> He said that detainees were let out of the cells from 6-11 a.m., were sent back to the cells until 2 p.m., and then let out again to work until 5:30 p.m. Sometimes in the evening they were let out of the cells again to watch television. Other children reported only being let out for three hours a day.

The children said they had to work at Ba Vi-picking up leaves, digging mud, feeding pigs and chickens, and cleaning the building and kitchen-but most welcomed the opportunity to stay active in the absence of any other educational or rehabilitative services.<sup>[188]</sup>

Conditions appear to be better in the section for orphans than in the group cells. Hai, a 12-year-old orphan from Quang Ninh province, who was arrested in 2005 while begging in a market in Hanoi, told us he was taken to a section for orphans at Ba Vi. He slept in a small upstairs room with three other boys, each with their own bed. Girls were on another floor, he said, and each floor had a communal toilet.<sup>[189]</sup> His room had a fan, light, and windows that opened.

A social worker who works with street children in Hanoi referred to Ba Vi as a "youth prison," saying:

It's a highly inappropriate placement for children who have committed no crime. One teenager reported that heroin is widespread in the prison, and children also say they are given no opportunity to study. Instead, they must work, caring for trees. But they report that they prefer this to Dong Dau because they are not as bored. The reports on food vary over time; some children have found it sufficient, others say it was inadequate.<sup>[190]</sup>

### **Beatings**

Several children told Human Rights Watch they were beaten and witnessed beatings of others while they were at Ba Vi. Other children said they were bullied and beaten by other detainees, and that the staffs do not stop older prisoners from picking on the younger ones.<sup>[191]</sup>

Trang said beatings are a disciplinary measure used when people disobey rules, don't want to wash their dishes, or fight with each other.<sup>[192]</sup> He said he witnessed many people "beaten badly." Afterwards none were provided medical treatment for injuries. Trang said he was beaten with a stick after disobeying the staff.<sup>[193]</sup>

Hoa, who spent three months in Ba Vi in 2006, spoke with Human Rights Watch shortly after her release. "At Ba Vi they beat me because I did not work fast enough," she said. "They treat us like dogs."<sup>[194]</sup>

### **Visitors**

While children said they were allowed to receive visitors and write letters to their families, only one of the children interviewed by Human Rights Watch (Binh) received a family visit during his stay at Ba Vi. Some of the children interviewed by Human Rights Watch said their families were informed of their detention; however, like Dong Dau, the facility is not easily accessible from Hanoi. Some children told us that staff confiscated gifts of food or money that visitors brought to other children.<sup>[195]</sup>

Journalists and officials have been taken on government-organized tours of Ba Vi to tour the orphanage and what the government presents as a "model" HIV/AIDS program. Some are certain, however, they are seeing only a small portion of the huge facility, and none that Human Rights Watch spoke with had ever seen the section where street children are detained.<sup>[196]</sup> Street children told us that they were not allowed to speak freely with visiting delegations.

One time some [Vietnamese] journalists came. We all had to wash before they came, and that day we had lots to eat.

Some of the girls were chosen to speak to the journalists. We were all too afraid to say anything, or the guards might kill

us.[197]

"When visitors come or they put us on television, they give us a new shirt to wear," said Hoa, who was detained at Ba Vi in 2006.[198]

A western journalist in Hanoi who visited part of Ba Vi on a press tour said: "It's not a real prison, but a prison by our standards. In Vietnam, it's hard to tell the difference between a re-education camp and a penal institution. What's clear is that people are not there of their own free will." [199]

### **Release**

The children we spoke with left the facility no better equipped to improve or change their lives than when they went in. They said they were not offered any counseling, training, or educational services at Ba Vi.[200]

On release from Ba Vi, the children are made to sign a commitment not to return to the street, and their possessions and the money they arrived with is usually returned. Three children said they are given 10,000 dong (\$ 0.62) upon release.[201] All of the children we spoke with returned to life on the streets in Hanoi. Two boys said they took the bus and one said he hitchhiked back to the city.[202]

Hoa, who has been working on the streets as a postcard seller since she was 15, spent three months in Ba Vi in 2006.

When I got out of Ba Vi, I had no way to make a living-the police took away all my postcards. I have no one to rely on. My father is dead; my mother and brother are still detained at Ba Vi. My mother is a water-seller and my brother shines shoes.[203]

Completely destitute, a month after her release from Ba Vi, Hoa was spending her days seeking refuge in public areas, and her nights sleeping on the streets.

Hai, the 12-year-old orphan, was released after three months, even though he had no parents or guardian or means of supporting and housing himself:

I stayed there for exactly three months. They gave me 10,000 dong when I left-the money I had in my pocket when I came. It was not enough for the bus, so I hitchhiked back to Hanoi. When I got there, first I begged in Dong Xuan market. Then I moved to Hang Da market. I am still begging now.[204]



## VI. Violations of National and International Standards

It is the responsibility of the State, society, the family and the citizen to ensure care and protection for women and children.

-Constitution of the Socialist Republic of Vietnam, 1992, article 40

The International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) are the two key international agreements to which Vietnam is party, establishing the standards by which street children, and in particular street children in detention, should be treated.<sup>[205]</sup> These treaties are supplemented by other international instruments developing these standards. They include the UN Rules for the Protection of Juveniles Deprived of their Liberty (The UN Rules) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) which, while not legally binding, provide authoritative guidance on the scope and application of states' international legal obligations regarding the treatment of children in detention or in conflict with the law.<sup>[206]</sup> Standards applicable to all in detention, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, are also relevant to Vietnam's treatment of detained street children.

The Convention on the Rights of the Child sets out that the core guiding principle in all state action concerning children that the best interest of the child be the primary consideration. <sup>[207]</sup> It also specifically provides that children separated from their families or deprived of their family environment are "entitled to special protection and assistance provided by the State."<sup>[208]</sup>

Vietnam's Constitution contains several provisions that abide by the basic principles of the Convention on the Rights of the Child. Article 64 states that the state and society shall recognize no discrimination among children. Article 65 states that children shall enjoy protection, care, and education by the family, the state and the society. Article 71 asserts that all citizens shall enjoy the protection of the law with regard to their life, health, honor, and dignity and strictly forbids the use of all forms of harassment, coercion, torture, and violation of a citizen's honor and dignity. <sup>[209]</sup>

Vietnam's 2004 Law on Child Protection, Care and Education provides for many fundamental rights and protections for all children. Specifically, it prohibits torture and mistreatment of children, and corporal punishment of juvenile offenders.<sup>[210]</sup> It also provides for the rights to be cared for and brought up to develop physically, intellectually, mentally and ethically; the right to live with parents; the right to health care and to study; and the right to be respected and have ones life, body, dignity, and honor protected.<sup>[211]</sup> The Law on Child Protection states that the government is responsible for "adopt[ing] policies and creat[ing] conditions for disadvantaged children to enjoy children's rights" including providing support and encouragement to families, individuals, and organizations to ensure that all disadvantaged children are cared for.<sup>[212]</sup>

## VII. Conclusion and Recommendations

On paper, many Vietnamese laws, decrees, and directives are consistent with the Convention on the Rights of the Child and demonstrate the government's stated commitment to care, protect, and educate children. Policies regarding street children largely call for a humanitarian approach that prohibits abuse and promotes rehabilitation and family reunification.

In practice, however, the government regularly authorizes campaigns in which street children are arbitrarily rounded up and institutionalized. Government officials turn a blind eye towards the abysmal conditions in the Social Protection Centers, particularly at Dong Dau, and the physical and emotional abuse street children suffer there. Social Protection Centers in their current form are inappropriate institutions for children and run contrary to policy objectives of protecting and rehabilitating street children and helping to reunite them with their families.

Children should not be detained except as a measure of last resort and for the shortest appropriate period of time. [213] When they are so deprived, they must be treated humanely with their best interests as the guiding principle for decisions and actions that are taken about their well being. Human Rights Watch urges the Vietnamese government to work with government ministries and employees, international donors, UN agencies, and NGOs to close the gap between stated commitments to child protection and the harsh reality of life for the street children of Hanoi.

Human Rights Watch makes the following recommendations:

### **To the Vietnamese government**

#### **Arbitrary arrest and round-up campaigns**

Call for an independent investigation of conditions and practices at DongDauSocialProtectionCenter and for development of a plan of action to halt abuses there.

End the practice of arbitrary arrests, roundups, and detention of street children, and ensure that any detentions are in full compliance with both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

#### **Mistreatment in police custody and Social Protection Centers**

Enforce the absolute prohibition on physical abuse and corporal punishment of children by police, security officials, staff, and other detainees while in police custody or government detention facilities, including Social Protection Centers. Protect children from all forms of torture and cruel, inhuman, or degrading treatment, as required by the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and Vietnam's Law on Child Protection.

Promptly investigate complaints concerning mistreatment and physical abuse of children by police and staff in police custody or government detention facilities, including SocialProtectionCenters, and order disciplinary measures and criminal proceeding where appropriate.

Enhance training for police and government staff at all levels on the special needs and rights of children (in particular street children), including international standards for the treatment of children deprived of their liberty and the administration of juvenile justice.

#### **Due process**

Ensure that children who are arrested and detained are promptly informed of the reason for their detention and are allowed access to a lawyer. Ensure that detention of all children, including street children, is subject to judicial oversight and that they have the right to challenge the legality of their detention. Imprisonment of children should always be a measure of last resort, for the shortest possible time, and in institutions with adequate juvenile facilities.

### **Conditions in Social Protection Centers**

Ensure that conditions in Social Protection Centers comply with standards set out in the Convention on the Rights of the Child and Vietnam's Law on Child Protection, as well as international standards for the treatment of children deprived of their liberty and for administration of juvenile justice. In particular, children in detention should be:

Allowed to contact their families or guardians, who should be immediately notified when the child is arrested or detained.

Provided adequate access to appropriate food, medical care, bedding, and water and hygiene; and have opportunities for education and recreation.

Separated from adults.

Fully informed of the rules, regulations, and their rights and responsibilities upon entrance to a detention facility, as well as appropriate systems of redress.

Not locked in rooms for extended periods but allowed outside of their rooms for exercise and leisure activities.

Provided immediate access to adequate medical care and medical facilities for the prevention and treatment of illness.

Provided access to training and educational programs while in detention.

Provided effective mechanisms to make uncensored complaints about the conduct of institutional staff members or the conditions of confinement.

Reunited with their families if this is deemed the best solution after adequate consultation has taken place with the children and their families, or placed in appropriate children's homes, approved voluntary institutions, and NGO-run programs for street children.

### **Monitoring of children in Social Protection Centers**

Allow independent nongovernmental organizations, including international human rights monitors, to periodically investigate Social Protection Centers and conduct confidential interviews with detained children of their choosing, with the consent of the children involved.<sup>[214]</sup>

Invite the U.N. Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment to visit Vietnam and investigate allegations of police abuse of street children, and abuse of children in Social Protection Centers and other detention facilities.

Invite the U.N. Working Group on Arbitrary Detention to visit Vietnam and investigate the detention of children in Social Protection Centers and other detention facilities.

### **To UN agencies and donor governments**

Raise concerns about mistreatment of street children by police and in Social Protection Centers in donor bilateral meetings with Vietnamese authorities, and work with them to promote children's rights.

Press the Vietnamese government to seek accountability of officials-including CPFC, MOLISA, DOLISA, SocialProtectionCenter staff, and the police-for abuses committed against street children, including extortion and physical abuse.

Earmark assistance for: training of police, law enforcement officials, staff from SocialProtectionCenters and government agencies such as CPFC and MOLISA on the rights of the child, the special needs of street children, and international standards for the administration of juvenile justice and the treatment of children deprived of their liberty.

Insist that donor-supported projects for street children place the best interests of children at the center of their operation, and are monitored to ensure no abuse or mistreatment of children is occurring.

Support and initiate projects that offer effective alternatives to institutionalization and facilitate the reunification of street children with their families (barring forced reunification where inappropriate).

## Appendix A

### DECREE No. 25/2001/ND-CP OF MAY 31, 2001 OF ISSUING THE REGULATION ON THE SETTING UP AND OPERATION OF SOCIAL CHARITY ESTABLISHMENTS

#### THE GOVERNMENT

Pursuant to the Law on Organization of the Government of September 30, 1992; Pursuant to Article 4 of the Government's Decree No.07/2000/ND-CP of March 9, 2000 stipulating social relief policies;

At the proposal of the Minister of Labor, War Invalids and Social Affairs,

#### DECREES

Article 1- To promulgate together with this Decree the regulation on the setting up and operation of social charity establishments.

Article 2- This Decree takes effect 15 days after its signing. The earlier regulations contrary to this Decree are all now annulled.

The ministers of: Labor, War Invalids and Social Affairs; Justice; Finance; Public Security; Health; Education and Training, and the chairman of Vietnam Committee for Child Protection and Care shall, within the ambit of their respective functions and tasks and under the provisions of law, have to guide the implementation of this Decree.

Article 3- The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government Prime Minister PHAN VAN KHAI

#### REGULATION ON THE SETTING UP AND OPERATION OF SOCIAL CHARITY ESTABLISHMENTS [\[215\]](#)

(Issued together with the Government's Decree No.25/2001/ND-CP of May 31, 2001)

#### Chapter I : GENERAL PROVISIONS

Article 11. Social establishments operating on the Vietnamese territory, set up by the State agencies, socio-political organizations, socio-professional organizations (referred collectively to as organizations) and individuals for humanitarian purposes and not for profit making, which admit people facing with exceptional difficulties, being unable to earn their living or having no conditions to live in their families, shall be referred collectively to as social charity establishments. 2. Social charity establishments having ten (10) people and more shall be governed by this Regulation. 3. Organizations and individuals that fully satisfy the conditions prescribed in Decree No.07/2000/ND-CP of March 9, 2000 on social relief policies and in this Regulation shall all be entitled to set up social charity establishments.

Article 2- Subjects to be admitted to social charity establishments include:1. People meeting with exceptional difficulties, being unable to earn their living and being one of the following: a) Orphans who lose their nurturing sources and have no relatives to rely on; b) Lonely old people who have no income sources, no one to support; c) Disabled persons who have no income sources, no one to support. 2. Persons who suffer from chronic mental illness and may commit acts dangerous to the society. 3. Persons who have no conditions to live in their families and voluntarily contribute funding or whose relatives and/or sponsors contribute funding for them to live in social charity establishments. 4. Other subjects decided by the competent State agencies.

Article 3- Social charity establishments are social public-service units, having legal person status and the following tasks: 1. Admitting, managing, fostering and educating subjects mentioned in Article 2 of this Decree. 2. Organizing functional rehabilitation and production activities; supporting the subjects in self-management, cultural, sport and other activities suitable to each subject's age and health conditions. 3. Coordinating with agencies and units in providing education, job-training, vocational guidance education, with a view to helping the subjects healthily develop their physical conditions and intellect as well as personality, integrate and reintegrate into the community.

Article 4- Funding for the operations of social charity establishments includes: 1. Self-procured sources of the social charity establishments' owners; 2. Support sources from State bodies, organizations and individuals inside and outside the country; 3. Contributions of families, relatives or sponsors of the social charity beneficiaries; 4. Revenue sources from production and/or service provision activities; 5. Other mobilized sources.

Article 5 1. The admission of social charity beneficiaries into social charity establishments must ensure the right subjects, right principles and right competence prescribed in this Regulation. 2. To prohibit all acts of taking the advantage of social charity establishments to conduct illegal and self-seeking activities.

## Chapter II: SETTING UP AND DISSOLUTION OF SOCIAL CHARITY ESTABLISHMENTS

Article 6- Dossiers of application for setting up social charity establishments of individuals shall comply with the form set by the Ministry of Labor, War Invalids and Social Affairs, each consisting of: 1. The application for setting up a social charity establishment; 2. The project on setting up the social charity establishment: its name, guidelines and objectives, operation term and location; the number of social charity beneficiaries to be admitted, the contingent of managerial and service personnel; the financial sources to ensure operations of the establishment as prescribed in Article 4 of this Regulation; the appellation and address of the head office of the sponsoring organization(s) and/or individual(s) (if any). 3. The lawful papers on the right to own or use land and houses as well as other facilities in service of operations of the social charity establishment. 4. The draft operation statute (detailed rules) of the social charity establishment. 5. The curriculum vitae of the head (director) of the social charity establishment with certification of the People's Committee of the commune/ward where such person resides. 6. The written approval of the setting up of the social charity establishment, issued by the commune-level People's Committee of the locality where the establishment's head office is to be located.

Article 7- Dossiers of application for setting up social charity establishments of organizations and mass organizations shall include: 1. All the documents prescribed in Clauses 1, 2, 3, 4 and 6, Article 6 of this Regulation. 2. The evaluation document and written request of the concerned provincial-level organization, mass organization or religious organization, for social charity establishments of organizations, mass organizations and religious organizations which fall under the deciding competence of the provincial-level People's Committees.

Article 8- The evaluation of dossiers for setting up social charity establishments shall be effected as follows: 1. The district Labor, War Invalids and Social Affairs Sections shall evaluate dossiers for setting up social charity establishments operating in the districts under their management. 2. The provincial Labor, War Invalids and Social Affairs Services shall evaluate dossiers for setting up social charity establishments operating in the provinces under their management. 3. The Ministry of Labor, War Invalids and Social Affairs shall evaluate ministries' and branches' dossiers for setting up social charity establishments under the management of such ministries or branches. 4. The bodies receiving and evaluating dossiers for setting up social charity establishments must comply with the following provisions: a) Issuing receipts to the dossier submitters. b) Within 30 days after receiving the full dossiers as prescribed, completing the evaluation of such dossiers and submitting them to the competent authority for issuing the setting-up decision or reaching agreement with the latter so that the managing agencies may set up social charity establishments according to the provisions in Article 8. c) Where

individuals or organizations fail to satisfy the conditions for setting up social charity establishments, the authority competent to decide the setting up of such establishments shall have to notify them thereof in writing, clearly stating the reasons therefore.

Article 9- The competence to permit the setting up, dissolution or operation termination of social charity establishments is stipulated as follows: 1. The Minister of Labor, War Invalids and Social Affairs shall issue decisions thereon for social charity establishments under the Ministry. 2. After reaching agreement with the Ministry of Labor, War Invalids and Social Affairs, the ministers, the heads of the ministerial-level agencies or the heads of the agencies attached to the Government shall issue decisions thereon for social charity establishments under the management of ministries or branches. 3. The presidents of the People's Committees of provinces or centrally-run cities shall issue decisions for social charity establishments operating in the provinces and provincial cities. 4. The presidents of the People's Committees of cities, rural districts, urban districts and towns of the provinces shall issue decisions thereon for mass organizations' and individuals' social charity establishments using non-budget funding sources, which operate on the district scale.

Article 10- Operation statutes of social charity establishments stipulated in Clause 4, Article 6 of this Regulation must contain the following contents: 1. The relationships in the direction and control of social charity establishments. 2. The responsibilities of the social charity establishments' personnel. 3. The responsibilities and interests of the subjects being fostered in social charity establishments. 4. The principles for management of property and finance of social charity establishments. 5. The administrative regulations and relevant matters, suited to the characteristics of each type of social charity establishments.

Article 11- In cases where social charity establishments need to change their names, offices, directors or alter their operation statutes, they shall have to send written requests to the bodies directly managing them and the authorities that have issued decisions on their setting up. Within 30 days after receiving such requests, the authorities that have issued decision to set up the establishments shall have to give written replies; past this time limit, if the social charity establishments receive no replies, they shall be entitled to make the requested changes.

Article 12- One person must not concurrently set up many social charity establishments or act as the director of two social charity establishments or more, except for cases where such establishments are financed by the same organization or individual.

Article 13- Dissolution of social charity establishments 1. A dossier of application for dissolution of a social charity establishment consists of: a) The application for dissolution of the social charity establishment, clearly stating the reasons for the dissolution ahead of time; b) The inventory of assets, finance and handling plan; c) The list of social beneficiaries being managed by the establishment and the plan to deal with them when the establishment dissolves. 2. Within 30 days after receiving the dissolution dossier, the competent body shall have to reply the establishment in writing. Pending the reception of a dissolution decision, the social charity establishment must not dissolve at its own free will. 3. In cases where the competent body issues decision to dissolve a social charity establishment due to the latter's law violation or inefficient operation, such social charity establishment shall have to execute the dissolution plan according to the competent body's decision within 90 days. 4. Upon the expiry of the social charity establishment's operation term, its director may ask the competent body for the extension thereof according to the procedures stipulated by the Ministry of Labor, War Invalids and Social Affairs.

### Chapter III: OPERATIONS OF SOCIAL CHARITY ESTABLISHMENTS

#### Section 1. MANAGEMENT OF FOSTERED SUBJECTS

Article 14- Admission of social beneficiaries: 1. Social charity establishments of the State and organizations defined in Article 1 shall

admit subjects by decisions of the agencies directly managing them. In urgent cases where the lives of the subjects defined in Article 2 of this Regulation are threatened, the social charity establishments may admit them without decisions but must, within 7 days, report such to their managing agencies so that the latter issue the admitting decisions. 2. The directors of the social charity establishments set up by individuals shall decide the admission of subjects strictly according to the approved plan on their setting up.

Article 15- The agencies directly managing social charity establishments shall issue decisions to admit fostered subjects in conformity with the sizes of the establishments, provided that such subjects meet all the following conditions: 1. Filing applications, made by themselves or their relatives, for admission into the social charity establishments, with certification and proposal of the commune-level People's Committees of the localities where such people register their permanent residence. 2. Having medical history dossiers and examination conclusions of the competent medical agencies, for disabled people and chronic mental patients. The admission dossiers shall be made according to the forms set by the Ministry of Labor, War Invalids and Social Affairs. In emergency cases, a written certification is required.

Article 16- Social charity establishments shall have to compile personal dossier for each subject, which shall comprise: 1. The application for admission into the social charity establishment, the subject's curriculum vitae, medical history dossier (if any) and admitting decision. 2. For abandoned children, their ages (estimated) and identification characteristics at the time of admission must be inscribed and their photos as well as other papers (if any) are required. Within 30 days after receiving decisions to admit abandoned children, the establishments shall have to carry out the birth-registration procedures for such children so as to ensure the latter's legitimate interests according to current regulations.

Article 17- The directors of social charity establishments shall have to manage and take care of the social charity beneficiaries according to Article 3 of this Regulation.

Article 18- The directors of social charity establishments shall decide to let the subjects out of the establishments when the latter meet one of the following conditions: 1. They are children who have reached adulthood or who are adopted or patronized by other people as prescribed by law. 2. They are disabled people who have been rehabilitated or mental patients, who have recovered (according to examination and evaluation documents). 3. Their families or lawful guarantors wish to nurture them.

Article 19- Subjects admitted into social charity establishments shall have to observe the establishments' statutes and their directors' decisions.

Article 20- Where a subject dies, the concerned social charity establishment shall have to organize the burial of such person according to current regulations.

## Section 2. PERSONNEL MANAGEMENT

Article 21- The organization and personnel of social charity establishments shall strictly comply with the plans submitted together with their setting-up dossiers and may be changed according to the provisions in Article 11 of this Regulation.

Article 22- 1. The directors of social charity establishments shall recruit laborers and sign labor contracts with them and with collaborators (if any) according to the provisions of labor legislation and current laws. 2. Wages and social insurance for social charity establishments' personnel shall comply with the provisions of current laws.

## Section 3. FINANCE AND PROPERTY MANAGEMENT

Article 23- Social charity establishments shall manage their finance and properties according to current law provisions.

Article 24- Social charity establishments shall have to submit periodical and annual reports on their financial operation results to the finance agencies of the same level and the agencies directly managing them.

Article 25- The expenditure from financial support sources or sources generated from their labor/production activities must be made public in a democratic manner and in strict compliance with the establishments' operation statutes already ratified by the competent authorities.

#### Section 4. REPORTING REGIME

Article 26- Social charity establishments shall have to submit periodical reports before June 15 and December 15 annually as well as their proposals to the direct managing agencies so that the latter make sum-up reports on different aspects of their operations and submit them to the provincial/municipal Labor, War Invalids and Social Affairs Services.

Article 27- Annually, before December 31, the provincial/municipal Labor, War Invalids and Social Affairs Services shall have to make statistical and sum-up reports on the situation on operations of social charity establishments in the provinces and cities, and submitted them to the Ministry of Labor, War Invalids and Social Affairs.

#### Chapter IV : STATE MANAGEMENT OVER SOCIAL CHARITY ESTABLISHMENTS

Article 28- The State management over social charity establishments shall cover the following contents: 1. Promulgating, amending, supplementing legal documents on operations of social charity establishments, and guiding the implementation thereof. 2. Setting up, dissolving social charity establishments and terminating their operations. Elaborating plans, programs and/or projects on operations of social charity establishments; organizing the preliminary review and final review of the implementation of policies towards the social charity establishments. 3. Examining, inspecting the law observance by social charity establishments; handling violations, settling complaints and denunciations about violations of policies and regimes related to operations of social charity establishments. 4. Providing professional guidance and support for the training of managerial and professional personnel for social charity establishments; supplying information on the State's policies and regimes for social charity establishments. 5. Organizing and guiding international cooperation on social charity, ensuring the efficiency, right purposes and right subjects.

Article 29-1. The Ministry of Labor, War Invalids and Social Affairs shall take responsibility before the Government for the unified State management of social charity establishments throughout the country. 2. The ministries, ministerial-level agencies and agencies attached to the Government shall, within their respective functions and tasks, have to coordinate with the Ministry of Labor, War Invalids and Social Affairs in exercising the State management over the operations of social charity establishments. 3. The People's Committees of all levels shall exercise the State management over social charity establishments in their respective localities.

#### Chapter V : COMMENDATION AND HANDLING OF VIOLATIONS

Article 30- Organizations and individuals making achievements in bringing up and managing social charity beneficiaries shall be commended and/or rewarded according to current regulations.

Article 31- Organizations and individuals violating the provisions of this Regulation shall, depending on the nature and seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability. If causing losses, they shall have to pay compensation therefore.



## Chapter VI : IMPLEMENTATION PROVISIONS

Article 32- This Regulation shall uniformly apply to all social charity establishments throughout the country.

Article 33- The Ministry of Labor, War Invalids and Social Affairs shall have to coordinate with the concerned agencies in guiding the implementation of this Regulation. The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, the presidents of the People's Committees of all levels shall, within the scope of their respective functions, tasks and powers, have to guide this Regulation and inspect the implementation thereof by their attached social charity establishments.

Article 34- Social charity establishments set up before the effective date of this Regulation shall have to amend and/or supplement their operation statutes in compliance with the contents of this Regulation.

On behalf of the Government Prime Minister PHAN VAN KHAI

## Appendix B

DECREE No. 07/2000/ND-CP of MARCH 9, 2000 ON SOCIAL RELIEF POLICIES[216]

THE GOVERNMENT Pursuant to the Law on Organization of the Government of September 30, 1992; Pursuant to the Law on the State Budget of March 20, 1996; Pursuant to the Ordinance on Storm and Flood Prevention and Fight of March 8, 1993; Pursuant to the Ordinance on the Disabled of July 30, 1998; At the proposal of the Minister of Labor, War Invalids and Social Affairs,

### DECREES Chapter I: GENERAL PROVISIONS

Article 1- This Decree provides for a number of social relief policies and regimes to render material and spiritual support and assistance to the lonely elderly, orphans, the seriously disabled and victims of natural calamities and other force majeure, who themselves and their relatives are unable to overcome the consequences (hereafter collectively referred to as social relief beneficiaries).

Article 2- The State encourages and creates conditions for domestic socio-political organizations, economic organizations, social organizations, individuals, foreign organizations and individuals as well as overseas Vietnamese to voluntarily give assistance to social relief beneficiaries.

Article 3- Social relief shall be chiefly rendered to families and communities where social relief beneficiaries live. The support for nursing at social charity establishments shall apply only to lonely persons who have no support or meet with exceptional difficulties.

Article 4- Organizations and individuals that have sufficient conditions in terms of material base and financial sources for nursing orphans, disabled persons and the lonely elderly for a long time with the minimum or higher level prescribed by law, in compliance with the State's planning and request no financial support from the State, are permitted to set up social charity establishments.

The Ministry of Labor, War Invalids and Social Affairs shall submit to the Government for issuance the Regulation on the setting up and operation of social charity establishments.

Article 5- The People's Committees of the provinces and centrally-run cities shall base themselves on the practical conditions of the social relief beneficiaries and their local potential resources to set forth the social allowance levels which must not be lower than those stipulated in Article 10 of this Decree.

### Chapter II: REGULAR SOCIAL RELIEF REGIME

Article 6- Beneficiaries of regular social relief under the management of communes and wards include: 1. Orphans being under-16 children whose parents are all dead or who are abandoned by their parents, lose their nursing sources and have no relatives to rely on; children whose either parent is dead and the other is missing under Article 88 of the Civil Code or incapable or unable to bring up his/her children according to the provisions of law. 2. The support less lonely elderly being persons who reach full 60 years of age and live alone; elderly persons who live with their spouses who are also senile, have neither children nor relatives to rely on and have no income sources. Single women without support and income, who reach full 55 years of age and are enjoying social relief allowances, shall continue to enjoy such allowances. 3. Seriously disabled persons without income sources and support; seriously disabled persons who have relatives but they are too senile or too economically poor to take care of them. 4. Chronic mental patients being persons who suffer from mental diseases like schizophrenia and mental disorders, which have been treated more than once by specialized psychiatric clinics but still persist and thus concluded as chronic illnesses, live alone without support or live with their poor families.

Article 7- The social relief beneficiaries defined in Article 6 of this Decree who face exceptional difficulties and are unable to support

themselves shall be considered and admitted into social charity establishments.

Article 8- For persons who are in the same situation as social relief beneficiaries but still have some support and nursing source while their families make applications to voluntarily send them into social charity establishments, which are approved by the competent authorities, their families must bear all costs as prescribed. There will be no financial support from the State budget for the subjects stated in this Article.

Article 9 1. Children aged 13 years or older, still living in social charity establishments and having no more schooling, shall be recommended to vocational training centers to learn jobs according to current regulations of the State. 2. Children having grown up, disabled persons having been functionally rehabilitated and mental patients having their illness stabilized, who are all living in social charity establishments, shall be sent back to their localities. The commune/ward People's Committees as well as their families shall have to receive and create conditions for them to have jobs and integrate themselves into their communities.

Article 10- 1. The minimum regular social relief allowance level managed by communes and wards is 45,000 dong/person/month. 2. The minimum nursing cost-of-living allowance level at the State-run social charity establishments is 100,000 dong/person/month; particularly for under 18-month children who should be fed with additional milk, the allowance level is 150,000 dong/person/month.

Article 11- Apart from the nursing cost-of-living allowance prescribed in Clause 2, Article 10 of this Decree, the subjects living in State-run social charity establishments shall also be entitled to the following allowances: 1. Allowance for buying daily-life essentials. 2. Allowance for buying common curative medicines. 3. Allowance for buying textbooks and learning aids, for children who are taking general education or supplementary education classes. 4. Monthly allowance for personal hygiene, for women beneficiaries of child-bearing age. 5. Allowance for funeral costs. The presidents of the People's Committees of the provinces and centrally-run cities shall decide the allowance levels suitable to the practical conditions of their respective localities.

Article 12- The social charity establishments are allowed to receive, use and manage all sources of funding and aid in kind (if any) contributed and donated by charity organizations and individuals, ensuring that they are used for the right purposes and the right beneficiaries and settled according to current financial regimes.

Article 13- The funding sources for nursing, operational apparatus and capital construction investment in social charity establishments shall be ensured by the budget of the level that manages such establishments according to the current provisions of the Law on the State Budget.

### Chapter III: IRREGULAR SOCIAL RELIEF REGIMES

Article 14- Beneficiaries of irregular (one-time) social relief are persons or households that meet with difficulties due to natural calamities or other force majeure, including: 1. Households with dead or missing member(s); 2. Households with collapsed, swept-away, burnt or seriously-damaged houses; 3. Households that lost production means and suffer from hunger; 4. Seriously injured persons; 5. Persons who suffer from pre-harvest hunger; 6. Persons who are seriously injured or dead due to some misfortune occurring outside their residence areas, while their families are not aware thereof and thus cannot attend to or bury them. 7. Wandering beggars during the time they are gathered and waiting for being sent back to their residence places.

Article 15- The irregular social relief allowance level for each category of beneficiaries defined in Clauses 1, 2, 3, 4, 5 and 6, Article 14 of this Decree shall be decided by the presidents of the People's Committees of the provinces and centrally-run cities, depending on the extent of damage and capability of mobilizing resources. The wandering beggars during the time they are gathered and waiting for being

sent back to their residence places shall receive 5,000 dong/person/day for no more than 15 days.

Article 16- The funding sources for irregular relief include: 1. Annual allocations from the State budget; allocations from the provincial, district and commune budgets; 2. Support from organizations and individuals inside and outside the country; 3. Donations from foreign countries and international organizations provided directly to the localities or through the Government or social organizations; Where the above-mentioned funding sources are not enough for irregular relief, the presidents of the People's Committees of the provinces and centrally-run cities shall report such to the Prime Minister for consideration and decision.

#### Chapter IV: ORGANIZATION OF IMPLEMENTATION

Article 17- The Ministry of Labor, War Invalids and Social Affairs shall assist the Government in exercising the State management over the social relief work; assume the prime responsibility and coordinate with the concerned ministries and branches in guiding the implementation of this Decree.

Article 18- 1. The Ministry of Finance shall have to ensure funding for social relief according to current regulations and in compliance with the Law on the State Budget. 2. The Ministry of Health shall have to guide the disease prevention, check-up and treatment for social relief beneficiaries and the assessment of the illness for the mentally ill persons and disabled persons. 3. The Ministry of Education and Training shall have to guide the organization of literacy education; the exemption and reduction of school fees and other contributions for students who are social relief beneficiaries according to the current regimes. 4. The Ministry of Agriculture and Rural Development shall have to coordinate with the Ministry of Labor, War Invalids and Social Affairs in determining the seriousness of natural calamity consequences, crop failures and pre-harvest hunger so as to work out remedial measures and guide the provision of irregular social relief.

Article 19- The People's Committees of the provinces and centrally-run cities shall have to: 1. Manage social relief beneficiaries and social charity establishments in their respective localities; 2. Organize the implementation of the social relief regimes for each category of social relief beneficiaries defined in this Decree; 3. Direct the construction and management of social charity establishments in their respective localities; 4. Direct the Labor, War Invalids and Social Affairs agencies and functional branches to guide organizations and individuals to support social relief beneficiaries; 5. Make annual cost estimates for regular and irregular social relief according to the provisions of the Law on the State Budget and its current guiding documents; guide the lower-level People's Committees, the Labor, War Invalids and Social Affairs agencies and functional branches to compile and synthesize the regular and irregular social relief plans.

#### Chapter V: REWARDS AND HANDLING OF VIOLATIONS

Article 20- Persons who make achievements and contributions to the charity activities for social relief beneficiaries shall be considered for rewards according to the State's commendation regime.

Article 21- Violators of the provisions of this Decree shall, depending on the seriousness of their violations, be disciplined, administratively sanctioned and, if causing material damage, pay compensation according to the provisions of law or, be examined for penal liability.

#### Chapter VI: IMPLEMENTATION PROVISIONS

Article 22- This Decree takes effect 15 days after its signing. The previous provisions which are contrary to this Decree are all now annulled.

Article 23- The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government

For the Prime Minister

Deputy Prime Minister NGUYEN TAN DUNG

[1] See Prime Minister's Directive No. 06/1998/CT-TTg, "On the Strengthening of the Task of Protecting Children, Preventing and Tackling the Problem of Street Children and Child Labor Abuse," (January 23, 1998); Prime Minister's Decision No. 134/1999/QĐ-TTg, "Ratification of the Program of Action for Protection of Children with Special Circumstances in the 1999-2002 Period" (May 1999); and Decree No. 07/2000/ND-CP "On Social Relief Policies" (March 2000).

[2] Duong Kim Hong and Kenichi Ohno, "Street Children in Vietnam: Interactions of Old and New Causes in a Growing Economy," Vietnam Development Forum, 2005, p.6.

[3] Human Rights Watch interview with social worker in Hanoi, December 2005.

[4] The Convention on the Rights of the Child defines as a child "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier." Vietnam's 2004 Law on Child Protection, Care and Education (Law on Child Protection) defines children as under 16 years of age, while Vietnam's Civil Code (article 20) defines a child as anyone under 18. Vietnam's Penal Code of 1997 (revised in 1999) defines the age of criminal responsibility to be 14 (for criminal offenses) but 12 for administrative offenses. Vietnam's Labor Law sets the minimum age for employment at 18; however, children as young as 15 can be employed under certain circumstances. Vietnam's Law on Child Protection states in article 2 that for cases where national laws differ from international agreements Vietnam has signed, international law take precedence.

[5] Duong and Ohno identify several different categories of street children in Vietnam: children who have run away from home or who have no home, and who sleep on the street; children who sleep on the street with their family or guardian; children who have a family or guardian and who usually sleep at home, but work on the streets; economic migrants who rent rooms with other working children; and bonded laborers. Duong Kim Hong and Kenichi Ohno, "Street Children in Vietnam: Interactions of Old and New Causes in a Growing Economy," Vietnam Development Forum, 2005, p. 6.

**[6] The government's mass campaign against social evils became prominent after the Eighth Party Congress in 1996. There is a Department of Social Evils Prevention within the Ministry of Labor, Invalids and Social Affairs (MOLISA). See Directive 33/CT-TW on "Heightening leadership against social evils" (March 1994); Directive 64/CT-TW on "Enhancing leadership and management, restoring order in cultural activities and cultural services and eliminating social evils" (December 1995); and a Seventh Party Congress document, "Eliminating social evils: Simultaneous implementation of education, economic, administrative and legal methods to effectively combat social evils."**

[7] While government policy is unclear, it appears that the children themselves are not considered social evils, only the factors that push them out of the protection of families and onto the street, and the abuses they face. (In fact, the government has identified street children as a population in special need of being shielded and protected from social evils.)

[8] Nghiem Xuan Tue, director of the Vietnamese government's Programs for Protection for Displaced Children, quoted in Cameron Barr, "Street Children Stand up for Themselves," Christian Science Monitor, December 14, 1994. Vietnam's reports to the Committee on the Rights of the Child have also acknowledged that the economic reform process and transition to a market economy have had a negative impact on the situation of children. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Initial reports of States parties due in 1992, Addendum: Viet Nam, CRC/C/3/Add 4, October 22, 1992.

[9] Prime Minister's Directive No. 06/1998/CT-TTg, "On the Strengthening of the Task of Protecting Children, Preventing and Tackling the Problem of Street Children and Child Labor Abuse," January 23, 1998.

[10] Dominique van de Walle, "Testing Vietnam's Public Safety Net," *Journal of Comparative Economics*, vol. 32, issue 4 (2004).

[11] Ibid.

[12] "The Growing Problem of Street Children in Vietnam," UNICEF, <http://www.unicef.org.vn/street.htm> (accessed March 6, 2006).

[13] "City tackles issue of homeless children," Vietnam News Service, August 1, 2006; Duong and Ohno, "Street Children in Vietnam," US Department of State, Vietnam Country Report on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, March 8, 2006. <http://www.state.gov/g/drl/rls/hrrpt/2005/61632.htm> (accessed April 14, 2006).

[14] Social workers, former and current street children, restaurateurs, and some journalists interviewed by Human Rights Watch in 2006 said the numbers of street children have not dropped during the last several years. In addition, most members of 12 agencies in Hanoi that work with street children interviewed for a 2003 study said they thought the numbers of street children were increasing. Tim Bond, "A Study on Street Children in Hanoi and an Assessment of UNICEF's Street Children's Project in Hanoi, Thanh Hoa and Hung Yen," The Youth Research Institute, 2003, p. 28.

[15] Ibid, p. 9.

[16] Ibid, pp. 13-14.

[17] Ibid, p. 20.

[18] According to Vietnam News Service, "Some 42 percent of working children earned around 20,000 dong (U.S.\$1.30) per day, 39 percent earned between 6,000 and 10,000 dong, while only 10 percent earned more than 20,000 dong." "Survey on Street Children and Child Labor," Vietnam News Service, September 11, 2004.

[19] Bond, "A Study on Street Children in Hanoi," p. 5.

[20] Duong and Ohno, "Street Children in Vietnam," p. 18.

[21] Human Rights Watch interview with Minh, a 15-year-old from Hung Yen province who works as a shoe shiner, Hanoi, March 2004.

[22] Human Rights Watch interview with Hung, an 18-year-old from Hung Yen province who works as a shoe shiner, Hanoi, March 2004.

[23] Human Rights Watch interview with Hung, an 18-year-old shoe shiner; Hanoi, March 2004.

[24] Human Rights Watch interview with Canh, a 17-year-old from Hung Yen province who works as a shoe shiner, Hanoi, March 2004.

[25] Prime Minister's Decision No. 134, "Ratification of the Program of Action for Protection of Children with Special Circumstances in the 1999-2002 Period," (May 1999).

[26] Prime Minister's Decision No. 134, "Ratification of the Program of Action for Protection of Children with Special Circumstances in the 1999-2002 Period," (May 1999); Situation Analysis of Institutional and Alternative Care Programmes in Vietnam (Hanoi: MOLISA, CIDA and UNICEF, 2004).

[27] Decree No. 25/2001/ND-CP (May 31, 2001) regulates the creation and management of Social Protection Centers. MOLISA, CIDA, and UNICEF, "Situation Analysis of Institutional and Alternative Care Programmes in Vietnam," January 2004.

[28] 2004 Law on Child Protection, art. 42.2.

[29] 2004 Law on Child Protection, Care, and Education, art. 8.2. See also Salazar-Volkman, A Human Rights-Based Approach, p. 30.

[30] Implementation Decree of the Law on Child Protection, Care, and Education, art. 24.1 (b).

[31] The 10th Draft Implementation Decree of the Law 25/2004/QH11 on Child Protection, Care and Education (June 15, 2004), art. 33.1. This draft is considered the final draft and was passed by the National Assembly on June 15, 2004, according to Spielmann, Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing

with Protection against Child Abuse, Plan (International) in Vietnam, 2005, p. 12.

[32] Dominique van de Walle, "The Static and Dynamic Incidence of Vietnam's Public Safety Net," Policy Research Working Paper (World Bank: 2002).

[33] Decree No. 07/2000/ND-CP on Social Relief Policies (March 2000), articles 17, 18, and 19; Decree No. 25/2001/ND-CP, Issuing the Regulation on the Setting up and Operation of Social Charity Establishments (May 2001). For a copy of Decree No. 25, see Appendix A; for Decree No. 7, see Appendix B.

[34] Ibid, art. 7.

[35] Ibid, art. 14.7.

[36] Ibid, art. 15.

[37] Penal Code of Vietnam, as amended in 1999, No. 15/1999/QH10 (December 21, 1999), articles 68, 69, 70. UNICEF, Briefing Note on Justice System for Children, Child Protection Section (UNICEF Vietnam, November 2005). See also Minh Spielmann, "Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse," Plan in Vietnam, 2005, p. 14.

[38] Penal Code, arts. 69.2, 69.3, 70.

[39] Decree No. 59/2000/ND-CP, Providing for the Application of Commune/Ward/Township-Based Education Measure to Juvenile Offenders (October 30, 2000), art. 1.

[40] Law on Child Protection, Care and Education, No. 25/2004/QH11 (Law on Child Protection), promulgated on January 1, 2005, official translation published in the English-language version of *Cong Bao* (Official Gazette), Nos 29-30, July 18, 2004, article 36.2. Spielmann notes an inconsistency between the English and Vietnamese versions of the Law on Child Protection. The English version of the law uses the term "disadvantaged children," while the original Vietnamese version of the same law refers to "children in special circumstances" (*tre em co hoan canh dac biet*). Both the English and Vietnamese versions of the Law's implementing regulations use the latter term. Spielmann, "Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse," Plan, 2005), p. 19.

[41] Law on Child Protection, art. 36.3.

[42] Ibid, art. 55.3.

[43] President's order 14/2002/L-CTN, "On the promulgation of the ordinance on handling of administrative violations," Standing Committee of the National Assembly (July 16, 2002). It states that children between the ages of 14 and 16 who commit administrative violations shall be sanctioned with a warning. Persons aged between 16 and 18 who commit administrative violations may be subject to fines, but the fines may not exceed half of the amount applicable to adults; if they do not have the money to pay the fines, their parents or guardians shall pay for them. President's order 14/2002/L-CTN, "On the promulgation of the ordinance on handling of administrative violations," Standing Committee of the National Assembly (July 16, 2002). 1999 Penal Code, article 72. Minh Spielmann, "Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse," Plan in Vietnam, 2005, p. 26.

[44] Terre des hommes Foundation, "A Study on Street Children in Ho Chi Minh City," p. 153.

[45] Implementation Decree of the Law on Child Protection, Care, and Education, art. 23.1(a).

[46] Decree No. 25/2001/ND-CP (May 31, 2001), "Issuing the Regulation on the Setting up and Operation of Social Charity Establishments" (May 2001), art. 28.3.

[47] Decree No. 25/2001/ND-CP (May 31, 2001) and Decree No. 07/2000/ND-CP, "On Social Relief Policies" (March 2000).

[48] Human Rights Watch interview with Trang, a 17-year-old shoe shiner, Hanoi, September 2004.

[49] Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990. Vietnam ratified the Convention on February 24, 1990.

[50] Christian Salazar-Volkman, "A Human Rights-Based Approach to Programming for Children and Women in Vietnam: Key Entry Points and Challenges," UNICEF, 2004, p. 30.

[51] Minh Spielmann, "Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse," Plan in Vietnam, 2005, p. 8.

[52] Bond, "A Study on Street Children in Hanoi," p. 14.

[53] All of the mass organizations of the Vietnamese Communist Party, such as the Women's Union and the Youth Union, are grouped under the Fatherland Front.

[54] Marr, 1994, cited in Scott Fritzen, "Escaping the low income low social protection trap in developing countries: What are the options?" Indian Journal of Social Development, vol. 3(2), 2003.

[55] Salazar-Volkman, "A Human Rights-Based Approach," p. 3.

[56] Bond, "A Study on Street Children in Hanoi," p. 14.

[57] Prime Minister's Directive No. 06/1998/CT-TTg, "On the Strengthening of the Task of Protecting Children, Preventing and Tackling the Problem of Street Children and Child Labor Abuse," (1998).

[58] Prime Minister's Decision No. 134/1999/QĐ-TTg, "Ratification of the Program of Action for Protection of Children with Special Circumstances in the 1999-2002 Period" (May 1999). In addition to addressing the issue of street children, the Decision targeted commercial child sexual abuse, child drug abuse, and criminal child abuse.

Bond, "A Study on Street Children in Hanoi," p.15. "Viet Nam: Country Progress Report," Post-Yokohama Mid-Term Review of the East Asia and the Pacific Regional Commitment and Action Plan against Commercial Sexual Exploitation of Children, (Bangkok: 2004), <http://www.unescap.org/esid/gad/issues/csec/Viet%20Nam.pdf> (accessed April 14, 2006).

[59] Communist Party of Vietnam, Ninth National Congress Documents, Hanoi, 2001, cited in Minh Spielmann, "Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse," Plan in Vietnam, 2005, p. 9.

[60] This is the government's second plan of action for children. Prime Minister's Decision No. 23/2001/QĐ-TTg (February 22, 2001).

[61] The four targets are summarized in Minh Spielmann, "Summary Analysis," Plan in Vietnam, 2005, p. 28.

[62] Bond, "A Study on Street Children in Hanoi," p. 13.

[63] Because social work is a relatively new field in Vietnam, there are few trained social workers able to assist street children. According to Salazar-Volkman, until 2004 social work was not recognized as a discipline at the university level.

[64] Bond, "A Study on Street Children in Hanoi," p. 7.

[65] For an evaluation of the Street Children's Project, see Bond, "A Study on Street Children in Hanoi."

[66] Social workers in Hanoi say the drop-in centers are not able to fully investigate the family's situation and whether it is in the child's best interest to return home. Human Rights Watch interview with a staff person from an international organization in Hanoi, March 2006.

[67] Human Rights Watch interview with a staff person from an international organization in Hanoi, March 2006.

[68] Human Rights Watch interview with social worker in Hanoi, July 2004.

[69] Terre des hommes Foundation, "A Study on Street Children in Ho Chi Minh City," p. 153.

[70] Christina Toh-Pantin, "Vietnam sweeps up street kids," Reuters, September 26, 2003.



[71] Individuals and organizations interviewed by Human Rights Watch from 2004-2006 provide consistent accounts of major police crackdowns on street children initiated before the SEA Games in 2003 and the 2004 ASEM meetings. The US State Department also reported on the sweeps in its 2003 report on human rights in Vietnam. "Vietnam Country Report on Human Rights Practices, 2003, Bureau of Democracy, Human Rights, and Labor, February 24, 2004. <http://www.state.gov/g/drl/rls/hrrpt/2003/27794.htm> (accessed April 14, 2006).

[72] Bond, "A Study on Street Children in Hanoi," p.61.

[73] "Vietnam rounds up drug addicts ahead of Southeast Asian Games," Agence France-Presse, October 3, 2003.

[74] MOLISA, Decision No 2886/LDTBXH-BTXA, Hanoi, August 22, 2003.

[75] "Hanoi to Round up the Homeless to Have More Order," *Thanh Nhien* newspaper, August 24, 2003.

[76] Viet Nam News, "Massive relocation of street kids starts soon," September 20, 2003.

[77] "Hanoi to Round up the Homeless to Have More Order," *Thanh Nhien* newspaper, August 24, 2003. Street children interviewed by Human Rights Watch confirmed that there was a "bounty" of 50,000 dong per child paid to special guards during the 2003 roundups.

[78] "New strategy to keep kids off streets," Vietnam News Service, April 30, 2004; "Number of Street Children in Vietnam Decreases by 10,000," Vietnam News Brief Service.

[79] Nguyen Dinh Thiet, director of the Children's Division of the Committee for Population, Family and Children, quoted in "New Strategy to Keep Kids Off the Streets," Vietnam News Agency, April 30, 2004.

[80] Prime Minister's Decision No. 19/2004/QĐ-TTg (February 12, 2004), art. 1.2. "Govt plan targets street, sexually abused children," Viet Nam News, February 19, 2004.

[81] "Vietnam: Project gives aid to street children," Thai News Service quoting Vietnam News Agency, May 25, 2006. "Vietnam works to reduce number of street children," Thai News Service quoting Vietnam News Agency, May 29, 2006.

[82] "Vietnam: Project gives aid to street children," Thai News Service quoting Vietnam News Agency, May 25, 2006.

[83] Human Rights Watch interview with Thinh, 22, who had been working on the streets since she was 12, Hanoi, March 22, 2006.

[84] Human Rights Watch interview with Huyen, a 35-year-old street vendor who was sent to Dong Dau in 2005, Hanoi, March 26, 2006.

[85] Human Rights Watch interview with a Vietnamese researcher, Bangkok, August 2006.

[86] Human Rights Watch interview with a social worker, Hanoi, March 2006.

[87] Vietnam became a party to International Covenant on Civil and Political Rights (ICCPR), on September 24, 1982. The ICCPR was adopted December 16, 1966, G.A. Res. 2200A (XXI), 999 U.N.T.S. 171 (entered into force March 23, 1976).

[88] These treaties are supplemented by other international instruments developing these standards. They include the UN Rules for the Protection of Juveniles Deprived of their Liberty (The UN Rules) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) which, while not legally binding, provide authoritative guidance on the scope and application of states' international legal obligations regarding the treatment of children in detention or in conflict with the law. Standards applicable to all in detention, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, are also relevant to Vietnam's treatment of detained street children. The UN Rules for the Protection of Juveniles Deprived of their Liberty (The UN Rules), G.A. res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990). The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. res. 40/33, annex, 40 UN GAOR Supp. (No. 53) at 207, UN Doc. A/40/53 (1985).

[89] According to the survey, one-third of the children interviewed reported that they had been picked up or arrested by the police at least once, usually in a police round-up

campaign. Most of the children said they were not charged or accused of any crime upon arrest. Only 7 percent reported being arrested for petty crime and 1 percent for using drugs. Bond, "A Study on Street Children in Hanoi," The Youth Research Institute, 2003, pp. 5, 45-46. A social worker who works with street children in Hanoi estimated that as many as 60 percent of Hanoi's street children have been arrested and detained at some time. Human Rights Watch interview with a social worker in Hanoi, March 2006.

[90] In Vietnam, inscription on and possession of a mandatory household registry document (*ho khau*) is essential not only to legally reside in one's home, but to legally hold a job, collect grain rations, attend a government-run school, receive public health care, travel, vote, or formally challenge administrative abuses. Without *ho khau*, children can be disqualified from basic social services, including education, poverty assistance, and health care. It also makes them more vulnerable to arrest or harassment by police. For example, one boy told us he was arrested when he was 18, while walking home from his job looking after motorbikes at a shop that closed at 11 p.m.. The police stopped him and demanded to see his identification card. Since he did not have one, he was taken to Dong Dau and then to Ba Vi. Human Rights Watch interview with Duong, age 19, Hanoi, January 2006.

[91] Article 9 of the ICCPR prohibits arbitrary arrest or detention. Article 9(5) of the ICCPR provides that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

[92] CRC, art. 37(b).

[93] CRC, art. 20(1).

[94] "Canh Sat 113" is a mobile police force that responds to emergency calls. They wear green uniforms and helmets and carry electric batons. The security guards (*bao ve*) have been described as "quazi police" or "volunteers" helping to keep the city safe in advance of international meetings or party congresses. Terre des hommes Foundation says that collection teams include mobile police units, security guards, and sometimes staff from DOLISA and the Department for Social Evils Prevention. *Terres des homes, A Study on Street Children in Ho Chi Minh City*, p. 153.

[95] Human Rights Watch interview with Phuoc, a 19-year-old shoe shiner, Hanoi, March 2004.

[96] Human Rights Watch interviews with social workers and street children, Hanoi, 2003-2006.

[97] ICCPR, Article 9 and CRC Article 37(d). The Rules for the protection of juveniles deprived of their liberty, (The UN Rules), (G.A. res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990)), also provide in greater detail the standards regarding, for example, parental or guardian notification and access to legal advice for all children detained. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)) also sets out similar standards applicable to children and adults in detention.

[98] Human Rights Watch interview with a social worker, Hanoi, December 2005.

[99] Vietnam's Penal Procedure Code states that "bodies ordering the arrest, custody or temporary detention of minors must notify their families or lawful representatives thereof immediately after the arrest, custody or temporary detention is affected." Cited in Spielmann, Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse, p. 15.

[100] Human Rights Watch interview with Trang, a 17-year-old shoe shiner, Hanoi, September 2004.

[101] Human Rights Watch interview with Anh, a 14-year-old rubbish collector, Hanoi, August 2004; Human Rights Watch interview with Phuoc, a 19-year-old from Hung Yen province who works as a shoe shiner, Hanoi, March, 2004; Human Rights Watch interview with Hai, a 12-year-old boy from Quang Ninh province who supports himself by begging in markets, Hanoi, February 2005.

[102] It was not clear to us whether the guard in the market was a private or government employee. Human Rights Watch interview with Anh, age 14, Hanoi, August 2004.

[103] Articles 7 and 10 of the ICCPR respectively prohibit torture, cruel, inhuman, or degrading treatment or punishment and require all deprived of their liberty to be treated humanely. Article 37(a) of the CRC specifically prohibits the torture, cruel, inhuman, or degrading treatment or punishment of any child. The UN Code of Conduct for

Law Enforcement Officials (G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979)) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990)) both set out that force should only be resorted to when strictly necessary.

[104] Law on Child Protection, arts. 7.6 and 7.9.

[105] Save the Children (Sweden) has worked with the Police Academy since 1997 and with the General Police Department since 1999. Marie Wernham, "An Outside Chance: Street Children and Juvenile Justice-an International Perspective," Consortium for Street Children, 2004.

[106] Christian Salazar-Volkman, "A Human Rights-Based Approach to Programming for Children and Women in Vietnam: Key Entry Points and Challenges," UNICEF, 2004, p.18.

[107] Human Rights Watch interviews with former street children and organizations working with street children, December 2005.

[108] Bond, "A Study on Street Children in Hanoi," p. 46. Note that the author believed that these figures are likely to be conservative due to problems establishing trust with street children who were interviewed.

[109] Human Rights Watch interview with Danh, a 17-year-old orphan from Thanh Hoa province, March 2004. He said he went to Hanoi to support his younger siblings through school.

[110] Human Rights Watch interview with Canh, a 17-year-old from Hung Yen province who has worked as a shoe shiner since he was 14, Hanoi, March 2004.

[111] Human Rights Watch interview with Duc, a 15-year-old shoe shiner from Hung Yen, Hanoi, October 2004.

[112] The cells vary in size, from 18 square meters (three by six meters) to 96 square meters (eight by 12 meters).

[113] See footnotes 97 and 99, above, regarding legal requirements that families and legal representatives of children in detention should be immediately notified of the child's whereabouts.

[114] Vietnam's Law on Child Protection states that all acts infringing on children's rights "shall be severely punished by law." This includes "torturing, maltreating, affronting [and] abusing children for personal benefits" as well as "applying measures that offend or lower the honor or dignity of, or applying corporal punishments to, juvenile offenders." Law on Child Protection, arts. 6.2, 7.6, and 7.9.

[115] See Vietnam's State Report to the Committee on the Rights of the Child, CRC/C/65/Add.20, July 5, 2002: "Article 7.1 of the 1992 Constitution of Viet Nam states: "Citizens have the inalienable right to freedom from physical abuse, they are protected by law in terms of life, health, honor and dignity. No one shall be put under arrest unless there is a decision issued by the People's Courts or a decision or ratification issued by the People's Procuratorate, with the exception of the case of being caught in action. Custody and detention shall only be in accordance with the law."

[116] Human Rights Watch interview with Binh, a 17-year-old shoe shiner, Hanoi, August 2004.

[117] See footnotes 97 and 99, above. Vietnamese law provides for citizens to be able to file complaints against government authorities. See Decree No. 67/1999/ND-CP, "Detailing and Guiding the Implementation of the Law on Complaints and Denunciations" (August 7, 1999).

[118] Children should be promptly and clearly informed of the rules of the facility, and their rights and obligations during detention, including disciplinary procedures, access to information, and a process for making complaints. UN Rules, paragraphs. 24 and 25.

[119] Human Rights Watch interview with Binh, age 17, Hanoi, August 2004.

[120] Ibid.

[121] Human Rights Watch interview with Kien, age 15, Hanoi, December 2005.

[122] Human Rights Watch interview with Duc, age 15, Hanoi, October 2004.

[123] Human Rights Watch interview with Hoa, Hanoi, August 2006.

[124] Human Rights Watch interview with Trang, a 17-year-old shoe shiner, Hanoi, September 2004.

[125] UN Rules, paragraph. 51, state that any child who is ill, complains of illness, or exhibits symptoms of physical or mental problems, should be promptly examined by a medical officer. One child said that only if beatings are very severe will the victim be sent to the medical room. Human Rights Watch interview with Binh, a 17-year-old shoe shiner, Hanoi, August 2004.

[126] Human Rights Watch interview with Minh, age 15, Hanoi, March 2004.

[127] Human Rights Watch interview with Quoc, a 14-year-old boy from Lao Cai province; Hanoi, January 2005.

[128] Human Rights Watch interview with Quoc, Hanoi, January 2005.

[129] Human Rights Watch interview with Anh, a 14-year-old boy who collects plastic bags in Dong Xuan market, Hanoi, August 2004.

[130] UN Rules paragraph. 67.

[131] UN Rules, paragraph. 87(a).

[132] The UN Rules state that personnel at children's detention facilities should be trained and committed professional officers who are qualified to address the special needs of children. They should perform their duties in accordance with their training in child welfare and international standards of human rights. UN Rules, paragraphs. 83, 85, and 87(d).

[133] UN Rules, paragraph. 64.

[134] Ibid, paragraphs. 64 and 68.

[135] Ibid, paragraph. 56.

[136] Human Rights Watch interview with Phuoc, a 19-year-old boy from Hung Yen province, about his detention the previous year, Hanoi, March 2004.

[137] Human Rights Watch interview with Binh, age 17, describing his detention at Dong Dau when he was 16, Hanoi, August 2004.

[138] Human Rights Watch interview with Binh, age 17, Hanoi, August 2004.

[139] Human Rights Watch interview with Trang, age 17, Hanoi, September 2004.

[140] Human Rights Watch interview with Binh, age 17, describing his detention at Dong Dau when he was 16, Hanoi, August 2004.

[141] Human Rights Watch interview with Anh, age 14, Hanoi, August 2004.

[142] Human rights Watch interview with Duc, age 15, Hanoi, October 2004.

[143] One child was told by a kitchen worker that the poor quality of the food is partly due to corruption: "For example, one day if we ate two kilograms of pig [cheek] they asked the cook to sign the paper saying that we ate five to six kilograms of rump or shoulder," he said. Human Rights Watch interview with Quoc, age 14, Hanoi, January 2005.

[144] Human Rights Watch interview with Phuoc, age 19, about his detention the previous year, Hanoi, March 2004.

[145] UN Rules, paragraph. 30.

[146] The detention of children with unrelated adults places children at extreme risk of abuse and is prohibited under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. The CRC requires children deprived of their liberty to be separated from adults "unless it is in the child's best interest not to do so"; the ICCPR prohibition has no such exception. See Convention on the Rights of the Child, article 37(c); the ICCPR, article 10(b), and the UN Rules, paragraph. 29.

[147] UN Rules, paragraph. 37.

[148] Ibid, paragraph. 47.

[149] Ibid, paragraph. 33.

[150] Ibid, paragraph. 34.

[151] Ibid, paragraph. 36.

[152] Ibid, paragraph. 49.

[153] Ibid, paragraph. 51.

[154] Ibid, paragraph. 32.

[155] The UN Rules state that juvenile detention facilities should provide activities and programs aimed at promoting the child's self-respect and sense of responsibility, and encouraging attitudes and skills to help them reintegrate into society in productive ways. The UN Rules, paragraph. 12.

[156] UN Rules, paragraphs. 38, 39, and 42.

[157] Convention on the Rights of the Child, art. 37(c).

[158] UN Rules, paragraph. 28.

[159] Ibid, paragraph 12.

[160] Many children interviewed by Human Rights Watch, as well as a social worker who works closely with street children, confirmed that they were not allowed to write or call their families.

[161] Human Rights Watch interview with Quoc, age 14, Hanoi, January 2005; Human Rights Watch interview with Binh, a 17-year-old shoe shiner, Hanoi, August 2004.

[162] Binh said that visits with family or guests can only be for five minutes. This is not a written rule, he said, "but that's what happens." If a family pays the guards 20,000 dong (U.S.\$1.25), they can visit longer, he added. Human Rights Watch interview with Binh, a 17-year-old shoe shiner, Hanoi, August 2004.

[163] "Investigation at readers' request," *People's Police* newspaper, November 2, 2004. According to the article, DOLISA subsequently requested an investigation. One staff person was dismissed from his position and his salary was lowered, and the director received a "warning punishment." While this article is somewhat unusual in exposing local corruption, it does not run contrary to Vietnam's policy of at times allowing the state media to investigate or criticize cases of corruption; what is not permitted in the state press is criticism of the Vietnamese Communist Party itself.

[164] UN Rules, paragraphs. 59-61.

[165] Implementation Decree of the Law on Child Protection, Care and Education, art. 16.5.

[166] Children have the right to protection from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." CRC, art. 19.

[167] The right to education is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, the International

Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A (III), UN Doc. A/810 at 71 (1948), art. 26; International Covenant on Economic, Social and Cultural Rights (ICECSR), adopted December 16, 1966, G.A. Res. 2200A (XXXI), 993 U.N.T.S. 3 (entered into force January 2, 1976), art. 13; Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, UN Doc A/REX/44/25 (entered into force September 2, 1990), art. 28.

[168] The UN Rules states that juvenile detention facilities should provide activities and programs aimed at promoting the child's self-respect and sense of responsibility, and encouraging attitudes and skills to help them reintegrate into society in productive ways. The UN Rules, paragraph. 12.

[169] Human Rights Watch interview with Phuoc, a 19-year-old boy from Hung Yen province, about his detention the previous year, Hanoi, March 2004.

[170] Human Rights Watch interview with social worker who works with street children, Hanoi, January 2006.

[171] Human Rights Watch interview with Duc, age 15, Hanoi, October 2004.

[172] Human Rights Watch interview with Duc, age 15, Hanoi, October 2004.

[173] Human Rights Watch with Lanh, age 15, Hanoi, December 2005.

[174] Human Rights Watch interview with Phuoc, a 19-year-old from Hung Yen province, about his detention the previous year, Hanoi, March 2004.

[175] Human Rights Watch interview with Quoc, a 14-year-old from Lao Cai province, Hanoi, January 2005.

[176] See Prime Minister's Directive No. 06/1998/CT-TTg, "On the Strengthening of the Task of Protecting Children, Preventing and Tackling the Problem of Street Children and Child Labor Abuse," (January 23, 1998); Prime Minister's Decision No. 134/1999/QD-TTg, "Ratification of the Program of Action for Protection of Children with Special Circumstances in the 1999-2002 Period" (May 1999); and Decree No. 07/2000/ND-CP "On Social Relief Policies" (March 2000).

[177] Implementation Decree of the Law on Child Protection, Care and Education, art. 16.5.

[178] Decree No. 67/1999/ND-CP, "Detailing and Guiding the Implementation of the Law on Complaints and Denunciations" (August 7, 1999).

[179] Human Rights Watch interview with Quoc, age 15, Hanoi, January 2005.

[180] Human Rights Watch interview with a social worker, Hanoi, January 2006.

[181] Human Rights Watch interview with social workers in Hanoi, March 2006.

[182] For more information about the detoxification center at Ba Vi, see: "Hanoi Centers Overloaded with Drug Addicts," New Hanoi newspaper, Vietnam News Briefs, May 10, 2004; Margot Cohen, "The Road to Relapse," Far Eastern Economic Review, May 31, 2001; "54 drug addicts escape in latest breakout from Vietnamese rehab centers," Associated Press, August, 10, 2002.

[183] A center for elderly people and handicapped children and "Hanoi Psycho Sanatorium" are also located in Ba Vi district, but in Thuy An, a different commune (sub-district). Thomas P. Kane, PhD, "Disability in Vietnam in 1999: a Meta-Analysis of the Data" (USAID: 1999), [pdf.dec.org/pdf\\_docs/PNACG781.pdf](http://pdf.dec.org/pdf_docs/PNACG781.pdf) (accessed April 11, 2006).

[184] Human Rights Watch interview with Duc, age 15, Hanoi, October 2004.

[185] Human Rights Watch interview with Minh, a 15-year-old from Hung Yen province who works as a shoe shiner, Hanoi, March 2004.

[186] Children under the age of 16 who are arrested for drug use or prostitution are not to be incarcerated with adults. Instead they are to be offered community rehabilitation or placed in Social Protection Centers. Human Rights Watch interview with a staff person from an international organization in Hanoi, March 2006.

[187] Human Rights Watch interview with Duc, age 15, Hanoi, October 2004.

[188] Human Rights Watch interviews with children who have been detained at Ba Vi, 2003-2006.

[189] Human Rights Watch interview with Hai, a 12-year-old boy from Quang Ninh province who supports himself by begging in markets, Hanoi, February 2005.

[190] Human Rights Watch interview with social worker in Hanoi, July 2004.

[191] Human Rights Watch interview with Duong, age 19, Hanoi, January 4, 2006, and with Hai, 12, Hanoi, February 2005.

[192] Human Rights Watch interview with Trang, an 18-year-old shoe shiner who was detained when he was 17, Hanoi, September 2004.

[193] Human Rights Watch interview with Trang, age 17, Hanoi, September 2004.

[194] Human Rights Watch interview with Hoa, a 22-year-old woman who has been working as a postcard seller in Hanoi since she was 15, Hanoi, August 2006.

[195] Human Rights Watch interview with Binh, a 17-year-old shoe shiner, Hanoi, August 2004.

[196] Human Rights Watch interviews with journalists and diplomats who have visited Ba Vi on tours arranged by the government, 2005 and 2006.

[197] Human Rights Watch interview with Chinh, Hanoi, December 2005.

[198] Human Rights Watch interview with Hoa, a 22-year-old woman who has been working as a postcard seller in Hanoi since she was 15, Hanoi, August 2006.

[199] Human Rights Watch interview with journalist, Hanoi, December 2005.

[200] Human Rights Watch interviews with children who have been detained at Ba Vi, 2003-2006.

[201] Human Rights Watch interview with Hai, a 12-year-old boy from Quang Ninh province who supports himself by begging in markets, Hanoi, February 2005; Human Rights Watch interview with Duc, age 15, Hanoi, October 2004; Human Rights Watch interview with Trang, a 17-year-old shoe shiner, Hanoi, September 2004.

[202] Human Rights Watch interview with Duc, age 15, Hanoi, October 2004; Human Rights Watch interview with Quoc, a 14-year-old boy from Lao Cai province; Hanoi, January 2005; Human Rights Watch interview with Trang, a 17-year-old shoe shiner, Hanoi, September 2004.

[203] Human Rights Watch interview with Hoa, Hanoi, August 2006.

[204] Human Rights Watch interview with Hai, a 12-year-old boy from Quang Ninh province who supports himself by begging in markets, Hanoi, February 2005.

[205] Vietnam has also ratified the Convention on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

[206] These treaties are supplemented by other international instruments developing these standards. They include the UN Rules for the Protection of Juveniles Deprived of their Liberty (The UN Rules) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) which, while not legally binding, provide authoritative guidance on the scope and application of states' international legal obligations regarding the treatment of children in detention or in conflict with the law. Standards applicable to all in detention, including the [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), are also relevant to Vietnam's treatment of detained street children. The UN Rules for the Protection of Juveniles Deprived of their Liberty (The UN Rules), G.A. res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990). The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. res. 40/33, annex, 40 UN GAOR Supp. (No. 53) at 207, UN Doc. A/40/53 (1985).

[207] Convention on the Rights of the Child states in article 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

[208] Convention on the Rights of the Child, art. 20(1).

[209] Minh Spielmann, "Summary Analysis of Significant Vietnamese Legal Normative Documents Dealing with Protection against Child Abuse," Plan in Vietnam, 2005, p.

13.

[210] Law on Child Protection, arts. 7.6 and 7.9.

[211] Law on Child Protection, arts. 11-14.

[212] Law on Child Protection, art. 42.1.

[213] Convention on the Rights of the Child, arts. 37 b and d.

[214] The UN Committee on the Rights of the Child's 2003 concluding observations regarding Vietnam's report to the Committee acknowledged that Vietnam's National Committee on Population, Family and Children can receive complaints and make non scheduled visits to institutions, but noted: "Although this type of monitoring system is important, it does not seem to be the independent monitoring body for the promotion and protection of children's rights, as outlined in the Committee's General Comment No. 2 on the role of independent human rights institutions." Concluding Observations of the Committee on the Rights of the Child, Viet Nam, U.N. Doc. CRC/C/15/Add.200 (2003). <http://www1.umn.edu/humanrts/crc/vietnam2003.html> (accessed October 20, 2006).

[215] Official Vietnamese government translation, [http://vbqtpl.moj.gov.vn/law/en/2001\\_to\\_2010/2001/200105/200105310001\\_en](http://vbqtpl.moj.gov.vn/law/en/2001_to_2010/2001/200105/200105310001_en) (retrieved November 4, 2006).

[216] Official Vietnamese government translation, [http://vbqtpl.moj.gov.vn/law/en/1991\\_to\\_2000/2000/200003/200003090001\\_en](http://vbqtpl.moj.gov.vn/law/en/1991_to_2000/2000/200003/200003090001_en) (retrieved November 4, 2006).

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